

Brian T. Hill

NAME

4467149

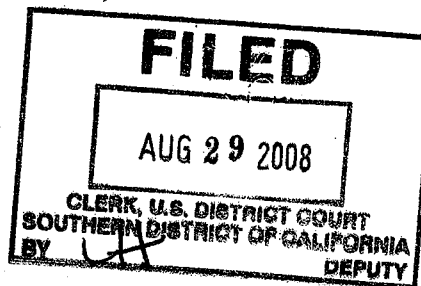
PRISON NUMBER

P.O. Box 5246

CURRENT ADDRESS OR PLACE OF CONFINEMENT

Corcoran, CA. 93212

CITY, STATE, ZIP CODE



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Brian T. Hill

(FULL NAME OF PETITIONER)

PETITIONER

v.

James E. Tilton

(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS])

RESPONDENT

and

Terry Brown

The Attorney General of the State of California, Additional Respondent.

Civil No

08-1180 JM(WMC)

(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

**FIRST AMENDED
PETITION FOR WRIT OF HABEAS CORPUS**

UNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack: No Judgement of conviction being attack
2. Date of judgment of conviction: January 1993
3. Trial court case number of the judgment of conviction being challenged: BA050-2222
4. Length of sentence: 29 Years to life plus life

5. Sentence start date and projected release date: February 1993
January 2019
6. Offense(s) for which you were convicted or pleaded guilty (all counts): First Degree murder, Kidnap for robbery, for ransom, conspiracy, robbery, etc
7. What was your plea? (CHECK ONE)
- (a) Not guilty ☒
- (b) Guilty ☐
- (c) Nolo contendere ☐
8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)
- (a) Jury ☒
- (b) Judge only ☐
9. Did you testify at the trial?
- ☐ Yes ☒ No

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the California Court of Appeal?
- ☒ Yes ☐ No
11. If you appealed in the California Court of Appeal, answer the following:
- (a) Result: conviction affirmed
- (b) Date of result (if known): January 11th, 1996
- (c) Case number and citation (if known): 2d crim. No. B074209
- (d) Names of Judges participating in case (if known): Fukuto, Act-
ing P.J., Nott, J. and Brundlin, J.
- (e) Grounds raised on direct appeal: Abuse of Discretion,
Prosecutorial misconduct, Insuffi-
cient Evidence, Instructional Error,
12. If you sought further direct review of the decision on appeal by the California Supreme Court (e.g., a Petition for Review), please answer the following:
- (a) Result: Review Denied
- (b) Date of result (if known): April 10th, 1996
- (c) Case number and citation (if known): S051647
- (d) Grounds raised: Attacking article 2.90, In-
structional Error, confrontation,

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:

- (a) Result: Denial
- (b) Date of result (if known): _____
- (c) Case number and citation (if known): _____
- (d) Grounds raised: _____
- _____
- _____
- _____

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?

☒ Yes ☐ No

15. If your answer to #14 was "Yes," give the following information:

- (a) California Superior Court Case Number (if known): BA050222
- (b) Nature of proceeding: Writ of Habeas Corpus
- (c) Grounds raised: Denial of trial counsel; denial of appellate counsel; the systematic denial of counsel
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No
- (e) Result: Petition Denied
- (f) Date of result (if known): January 23rd, 2008

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?

☐ Yes ☒ No

17. If your answer to #16 was "Yes," give the following information:

- (a) **California Court of Appeal** Case Number (if known): _____
- (b) Nature of proceeding: _____
- (c) Names of Judges participating in case (if known) _____
- (d) Grounds raised: _____
- (e) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No
- (f) Result: _____
- (g) Date of result (if known): _____

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Supreme Court**?

☐ Yes ☒ No

19. If your answer to #18 was "Yes," give the following information:

- (a) **California Supreme Court** Case Number (if known): _____
- (b) Nature of proceeding: _____
- (c) Grounds raised: _____
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No
- (e) Result: _____
- (f) Date of result (if known): _____

20. If you did *not* file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court, containing the grounds raised in this federal Petition, explain briefly why you did not:

Not regarding criminal conviction; YES as to Prison conditions

COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your **first** federal petition for writ of habeas corpus challenging this conviction?

☒ Yes ☐ No (If "YES" SKIP TO #22)

- (a) If no, in what federal court was the prior action filed? _____
- (i) What was the prior case number? _____
- (ii) Was the prior action (CHECK ONE):
- ☐ Denied on the merits?
- ☐ Dismissed for procedural reasons?
- (iii) Date of decision: _____
- (b) Were any of the issues in this current petition also raised in the prior federal petition?
- ☐ Yes ☐ No
- (c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?
- ☐ Yes ☐ No

CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present *all* other grounds to the California Supreme Court before raising them in your federal Petition.
- **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

GROUND FOR RELIEF

22. State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground, (e.g. what happened during the state proceedings that you contend resulted in a violation of the constitution, law or treaties of the United States.) If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE:** Denial OF the Right to Present Documentary Evidence

Supporting FACTS: While being illegally tried, convicted, sentenced and confined in a California State Prison pursuant to a state court judgement in contravention to and in violation of state and federal statutes, laws, and constitutions as vested in Calif. Const. Art. I, Sections 15 and 16; Art. III, Section 13; U.S.C.A. Const. Amend 5, 6, and 14, et. seq. the Petitioner elects to challenge the Denial of the Statutory and constitutional Right to Present Documentary Evidence during a Prison Disciplinary Hearing in violation of U.S.C.A. Const. Amend

Did you raise **GROUND ONE** in the California Supreme Court?

☒ Yes ☐ No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition): habeas corpus
- (2) Case number or citation: 5156515
- (3) Result (attach a copy of the court's opinion or order if available): Denied

Continuing Ground
one: Facts: 14, et. seq. and
other constitutional Rights
violations as follows:

On Feb. 16th, 2005 a
Lieutenant J. Jimenez proceed-
ed to hear a rule violation
report log No. # 01-05-A-043
in violation of the petitioner's
statutory and constitutional
rights regarding the peti-
tioner's alleged battery on
an inmate with a weapon.
(a broom) (see Exhibit 1)

At this hearing, the
petitioner attempted to pre-
sent a C.D.C. 7219 Form that
reflected medical personnel's
assessment of inmate Mar-
tin that demonstrated the
"lack" of "bruises", "scratches",
"scrapes", "swelling", etc...
on his head or torso (see
Exhibit 2) that was perti-

continuing Ground One:
 Facts: went to the Petitioner's
 defense that resulted in a vio-
 -lation of the Petitioner's con-
 -stitutional Rights to Due Pro-
 -cess of law as guaranteed un-
 -der U.S.C.A. Const. Amend. 4.

No where in this Fact
 Finding Report does it reflect
 why the Petitioner was de-
 -nied this constitutional Right,
 whether or not it was perti-
 -nent to the Petitioner's defense
 or not, whether or not this
 documents credibility was as-
 -sessed as to its use regard-
 -ing this disciplinary hearing,
 etc... (See Exhibit 1) and
 nor was this constitutional
 Right denied for correctional
 goals, safety and security, pen-
 -alogical and or public safety
 purposes.

POINTS AND AUTHORITIES
IN SUPPORT OF GROUND ONE:

In *Wolff v. McDonnell*

(1974) 418 U.S. 539, 546, 94 S. Ct. 2963, 41 L. Ed. 2d 935, 957, White, J. wrote in part for this court that "we are also of the opinion that the inmate facing disciplinary proceedings should be allowed to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals. Ordinarily, the right to present evidence is basic to a fair hearing." (See also *Ponte v. Real* (1985) 471 U.S. 491, 495, 105 S. Ct. 2492, 85 L. Ed. 2d 553, 558; *Clutchette v. Procunier* (9th Cir. 1994) 497 F.2d 809, 818; Calif. Code of Reg., Title 15, Section 3320(L); Dept. of Operations Manual Section 52080.9.)

In this matter, the petitioner was denied this constitutional right for non-institutional security, correctional goals, penological and or public safety purposes that requires

a court order mandating the reversal of this guilty finding, the restoration of these points as deducted, the removal of this rule violation report from the petitioner's central file, etc.

(b) **GROUND TWO:** Denial of the Right
to call witnesses

Supporting FACTS: During the course of
this disciplinary hearing, the Peti-
titioner was denied the consti-
tutional rights to call witness
es in violation of his statutory
and constitutional rights to Due
Process as guaranteed under U.S.
C.A. Const. Amend. 14. During this
hearing, the Petitioner attempted
to call correctional officers T.
Rocha and H. Gomez as witness
es to the surrounding circum-
stances of these allegations in
which %d T. Rocha was made
available by telephone (see pp.
2-3 of Exhibit 1) and this hear-
ing officer falsely alleged that
the Petitioner waived %d H. Gon-
ez as a witness, fabricated the
Petitioner's alleged verbal excep-
tance of this waiver of this
witness, and attempted to fabri-

Did you raise **GROUND TWO** in the **California Supreme Court**?

☒ Yes ☐ No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition): Habeas corpus
- (2) Case number or citation: 5156515
- (3) Result (attach a copy of the court's opinion or order if available): Denied

continuing facts of Ground Two: state this waiver in writing. (see p. 2 of Exhibit 1)

Nothing in this Final Report reflects the waiver of 9/8 H. Gomez as a witness, that the petitioner consented to this waiver, that the calling of this witness was denied to further institutional security, correctional goals, for penological, safety and security and or public safety purposes that amounts to a violation of the petitioner's constitutional rights to due process as guaranteed under U.S.C. A. const. Amend. 14.

POINTS AND AUTHORITIES IN SUP PORT OF GROUND TWO.

In *Wolff v. McDonnell* (1974) 418 U.S. 539, 566, 94 S. Ct. 2963, 41 L. Ed. 2d 935, 956, White, J. wrote in part as that "the petitioner should be allowed to call witnesses in his defense

when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals." (See also *Ponte v. Reza* (1985) 471 U.S. 491, 495, 105 S.Ct. 2192, 85 L.Ed.2d 553, 558; *Clutchette v. Procunier* (9th Cir. 1974) 497 F.2d 809, 818; Calif. Pen. Code Section 2932 (c)(8)(3); Calif. Code of Reg., Title 15, Sections 3315(e), 3320(i); Dept. of Operations Manual Section 52080.5.3.)

In this matter, the petitioner was denied this constitutional right for no such purpose and for any other purposes and this fabrication of this waiver supports the petitioner's allegations of this constitutional right to due process violation as guaranteed under U.S.C.A. Const. Amend. 14 that requires a court order mandating the reversal of this guilty finding, the restoration

of these points is deducted,
the removal of this rule viola-
-tion report from the petition-
-er's central file, etc....

(c) **GROUND THREE:** Denial of the Constitutional Right to Present Documentary Evidence

Supporting FACTS: The Petitioner was further Denied the Constitutional Rights to Due Process as to the Right to Present Documentary Evidence as to the Reporting Employee of this RVR, T. Davis, as vested in U.S.C.A. Const. Amend 14. When the Petitioner was approached on Feb. 8th, 05 by C/O N. Meiza who was posing as the Petitioner's investigative employee, the Petitioner informed C/O N. Meiza verbally that he wanted her to delve into the personnel file of C/O T. Davis to see if C/O T. Davis had any prior complaints filed against him for writing False and Fabricated rule violation reports, Supplemental reports, 128 G's, etc. Per Calif. Code of Reg., Title 15, Sections 3315(d)(7), 3450(2), (2)(7), et seq.

Did you raise **GROUND THREE** in the **California Supreme Court**?

☒ Yes ☐ No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition): Habers corpus
- (2) Case number or citation: 5151515
- (3) Result (attach a copy of the court's opinion or order if available): Denied

Such a Denial of this constitutional right was perpetuated for non-institutional security, correctional goals, penological, safety and security, and or public safety purposes that amounts to a violation of the petitioner's constitution -al rights to Due Process of Law as guaranteed under U.S.C.A. Const. Amend. 14.

POINTS AND AUTHORITIES IN SUPPORT OF GROUND THREE

As was pointed out in Ground I of this writ, the petitioner has the constitution -al and statutory rights to present documentary evidence during disciplinary hearings. (Wolff v. McDonnell (1974) 418 U.S. 539, 566, 94 S.Ct. 2963, 41 L.Ed.2d 935, 956; see also Ponte v. Real (1985) 471 U.S. 491, 495, 105 S.Ct. 2192, 85 L.Ed.

2d 553, 558; *Clutchette v. Procunier* (1974) 497 F.2d 809, 818; Calif. code of reg., title 15, section 3320(L); Dept. of Corrections Manual Section 52080.9) and the denial of such rights amounts to the violation of the right to due process of law.

As the court wrote in *Clutchette v. Procunier*, *supra*, in part that an individual facing disciplinary charges "also has a right to present witnesses and documentary evidence to support his contentions. The ability to produce evidence other than his own testimony is necessary to assure that he will be heard" in a meaningful manner." Without such a right, relevant exculpatory evidence, not within the personal knowledge of the

accused but nonetheless essential to a fair and accurate fact finding determination, may not be heard at all; relevant corroborative testimony and real evidence, frequently important for the defense of a possibly unreliable prisoner, may also be presented for the same purpose."

In this matter, such a right was denied and wasn't denied for institutional security, correctional goals, penological, safety and security and or public safety purposes that demonstrates this violation of the right to due process of law that warrants the reversal of this guilty finding, the restoration of these points as deducted, the removal of this rule

violation report from the
petitioner's central file, etc.

(d) **GROUND FOUR:** Denial of the Right to a Fair and Impartial Hearing

Supporting FACTS: During the course of the hearing of this rule violation report by lieutenant J. Finanez, this lieutenant began to exercise a predetermination as to the petitioner's guilt in violation of the statutory and constitutional rights to present a defense, witnesses, documentary evidence, by excepting this RVR as factual, failing to consider mitigating factors in the petitioner's favor, etc., as guaranteed under U.S. C.A. const. Amend. 14. In regards to the denial of a fair and impartial hearing by way of the denial of the right to present a defense to these allegations, the petitioner attempted to offer testimony on his own behalf to reflect that the

Did you raise GROUND FOUR in the California Supreme Court?

☒ Yes ☐ No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition): Habeas
- (2) Case number or citation: 5156515
- (3) Result (attach a copy of the court's opinion or order if available): Denied

Petitioner did not batter inmate
 Martin with a weapon, (a broom)
 does not have a history of
 violence, has not been given
 a SHU term and or has been
 sent to the SHU in over (11)
 eleven years, (see Exhibit 3)
 that by the absent of
 scars, scratches, swelling,
 bruises, etc... on inmate
 Martin reflects the absence
 of sufficient evidence to
 sustain the charge of in-
 mate Martin being battered
 with a weapon (see Exhibit
 2) in which this Hearing
 officer totally "Ignored" this
 "testimony" and "Mitigating fac-
 tors" and based this "Guilty
 Finding" on this "RVR" and it
 alone. (see p. 4 of Exhibit 1)

Such a "Manifestation"
 of "Bias" demonstrates the "Lack"
 of "Neutrality" in this matter
 and "Shows" an "Interest" in
 the outcome of these pro-

ceedings therefore displaying this blatant denial of the statutory and constitutional rights to Due Process of Law for Non-Institutionalized security, correctional goals, Penological, Safety and Security and or Public Safety purposes. (See Exhibit 1)

As to the Denial of a Fair and Impartial Hearing by way of the Denial of the Right to Present Documentary Evidence (C/O T. Davis Personnel File and this CDC 7219 Form for inmate Martin) as a part of the petitioner's defense such a denial impaired the petitioner's opportunity to demonstrate that this RVR was fabricated and these allegations false and that inmate Martin wasn't battered with a weapon as alleged by C/O T. Davis and as proved by the absence of scars, scratches, scrapes, bruises, swell

ings, etc... (See Exhibit 2)
 therefore warranting the exa-
 -mination of G. T. Davis's Per-
 -sonnel File for prior com-
 -plaints of writing false and
 fabricated RVR's, Supplemental
 Reports, etc... and or com-
 -plaints by staffs, other law
 enforcement personnel, etc...

Such a denial is a
 blatant "Manifestation" of "Per-
 -sonal Bias" demonstrating the
 "Lack" of "Neutrality" in this
 matter and "Shows" an "In-
 -terest" in the outcome of
 these proceedings therefore dis-
 -playing this statutory and con-
 -stitutional rights violations for
 Non-institutional security, cor-
 -rectional goals, penological,
 safety and security and or
 for public safety purposes.
 (See Exhibit 1)

As to the Denial of a
 Fair and Impartial Hearing
 by way of the Denial of the

Right to call witnesses in
 this matter, the Petitioner re-
 -quested that C/o's T. Rocha
 and H. Gomez be summoned
 as witnesses in this matter
 (see p. 2 of Exhibit 1) in
 was granted that allowed C/o
 T. Rocha to testify by tele-
 phone. It is alleged by this
 Hearing Officer that C/o H. Go-
 -mez was not available as
 a witness due unto him be-
 ing out on sick leave, there-
 -fore causing this Hearing
 Officer to Fabricate this al-
 -ledge waiver of this wit-
 -ness (see p. 2 of Exhibit
 1) even though it is Not
 signed by the Petitioner, in-
 -itIALIZED, etc... to so reflect
 this waiver, therefore deny-
 -ing the petitioner this
 statutory and constitutional
 Right for Non-institutional
 Security, correctional goals,
 Penological, Safety and Securi-
 -ty and or Public Safety

Purposes. This Hearing Officer could have "Postponed" this "Hearing", made C/O H. Gomez "Available" by "Telephone", etc.. and by this Hearing Officer deliberately "Refusing" to and blatantly "Failing" to "Do" so demonstrates a "Manifestation" of "Bias" and the "Lack" of "Neutrality" in this matter and "Shows" an "Interest" in the Outcome of these Proceedings, therefore displaying this Denial of this statutory and constitutional rights to Due Process of Law for Non-institutional Security, correctional goals, Penological, Safety and Security, and or Public Safety purposes. (See Exhibit 1)

As to the Denial of a Fair and Impartial Hearing by way of the Acceptance of this RVR as Factual and Basing this Guilty Finding on it alone, such an act is

a blatant Denial of the Petitioner's statutory and constitutional Rights to Due Process.

If this Final copy of this RVR is examined, it would be discovered that this Hearing Officer based this RVR and it alone (see p. 4 of Exhibit 1) without considering Mitigating and or Aggravating Factors in or against the Petitioner's favor, the Petitioner's testimony, this esc 7219 form, Co T. Davis's Personnel File, etc... For Non-institutional Security, correctional goals, Penological, safe-ty and Security and or Public Safety purposes, therefore "Manifesting" his "Personal Bias" and "Lack" of "Neutrality" in this matter that "Shows" an "Interest" in the outcome of these Proceedings that amounts to the Denial of the Petitioner's

statutory and constitutional rights to Due Process of law as guaranteed under U.S.C.A. constitutional Amend. 14.

And as to the denial of a fair and impartial hearing by way of the failure to consider Mitigating Factors in the petitioner's favor, (see p. 4 of Exhibit 1) prior to this incident, the petitioner had not been issued a RVR in over (2) two years, doesn't have an extensive and or pervasive history of violence, hasn't been sent to a SHU and or issued a SHU term in over (11) eleven years, etc. (see Exhibit 3) therefore demonstrating the "lack" of "Aggravating Factors" that warranted the implementation of a (15) fifteen month SHU term, the cost of (360) three hundred sixty dollars credit, the addition of (26)

twenty six points, etc.... and by this Hearing Officer Not considering these Factors and Not doing so for Non-institutional Security, correctional goals, Penological, Safety and Security and or Public Safety purposes demonstrates a "Manifestation" of "Personal Bias" and the "Lack" of "Neutrality" in this matter and "Shows" an "Interest" in the outcome of these proceedings therefore demonstrating this Denial of the Petitioner's Statutory and constitutional Rights violations to due process warranting relief.

POINTS AND AUTHORITIES

IN SUPPORT OF GROUND FOUR

In *Wolff v. McDonnell* (1974) 418 U.S. 539, 541, 94 S.Ct. 2963, 41 L.Ed.2d 935, 959, this

court wrote that a disciplinary
 -ry "committee is not left
 at large with unlimited dis-
 -cretion. It is directed to
 meet daily and to operate
 within the principles stated
 in the controlling regulations,
 among which is the com-
 mand that "[f]ull consider-
 -ation must be given to the
 causes for the adverse be-
 havior, the setting and cir-
 -cumstances in which it oc-
 -curred, the man's account-
 -ability, and the correctional
 treatment goals," as well as
 the direction that "disciplinary
 measures will be taken only
 at such times and to such
 degrees as are necessary
 to regulate and control a
 man's behavior within ac-
 -ceptable limits and ~~which~~
~~behavior~~ be rendered co-
 -prehensively or in the nature
 of retaliation or revenge."

In *Clutchette v. Pro-*
cunier (9th Cir. 1974) 497 F.2d
 809 at 820 this court wrote
 that the "Basic to an ac-
 -cused prisoner's constitu-
 -tional guarantee of an ac-
 -curate and fair fact find-
 -ing determination prior to
 imposition of sanctions is
 the right to be heard by
 an impartial disciplinary com-
 -mittee." "[P]ersonal know-
 ledge of, and sometimes bias
 toward, the inmate defendant,
 tendency to support staff,
 and reaction to inmate atti-
 -tude toward the [disciplin-
 -ary committee]" may af-
 -fect the decisions of any
 prison administration or
 staff member sitting on a
 disciplinary committee. And
 it is likely that most pri-
 -son officials will have
 some awareness of at
 least the more significant

disciplinary problems which have arisen within the institution. Nevertheless, provided that no member of the disciplinary committee has participated or will participate in the case as an investigating or reviewing officer, or either is a witness or has personal knowledge of material facts related to the involvement of the accused inmate in the specific alleged infraction (or is otherwise personally interested in the outcome of the disciplinary proceeding) a hearing board composed of prison officials will satisfy the due process requirement of a "neutral and detached hearing body." In this matter, the petitioner was denied such statutory and constitutional rights in violation of the due process

clause of the 14th Amendment of the U.S. Constitution. According to the Calif. Code of Reg., Title 15, Sec. 3320(h): Staff who observed, reported, classified, supplied supplemental reports to, or investigated the alleged rule violation; who assisted the inmate in preparing for the hearing; or for any other reason have a predetermined belief of the inmates guilt or innocence shall not hear the charges or be present during deliberations to determine guilt or innocence and disposition of the charges.

From the examination of the final copy of this RVR it would be noted that nowhere in the body of this report does it state why the petitioner wasn't

allowed to give testimony
 on his own behalf, waived
 c/o H. Gomez as a witness,
 denied the right to present
 documentary evidence, why
 the acceptance of this RVR
 as factual and basing the
 Petitioner's guilt on this re-
 port and it alone, why
 failing to consider mitiga-
 ting factors in the Petition-
 er's favor was performed,
 etc... demonstrating a "Mani-
 festation" of "Bias" that
 shows a "Lack" of "Neutra-
 lity" in this matter that
 "Displays" a "Personal Interest"
 in the outcome of these
 proceedings for non-correc-
 tional goals, Penological,
 Safety and Security and or
 Public Safety purposes in
 violation of the Petitioner's
 statutory and constitutional

Rights to Due Process as
guaranteed under U.S.C.A.
const. Amend. 14 that re-
quires relief.

Ground Five: Denial of the Right to Appeal this Fact Finding Report (court Access)

Facts: The petitioner initiated a inmate grievance 109 No. # CAL-A-05-0468 regarding this RVR on Mar. 6th, 2005 (see Exhibit 4) to have it re-turned on Mar. 21st, 2005 un-processed. (see p. 7 of Exhibit 4) the petitioner resub-mitted this grievance for its processing to have and all relief denied at the second level of review by a D.W. Bell CCH appeal coordinator, Tim Ochoa, chief deputy warden, etc... on April 28th, 2005. (see Exhibit 5)

this grievance was received on May 4th, 2005 by the petitioner to be forward to the director of corrections on June 7th, 2005 for the third and Final.

Level of review to "Not" have this "Grievance" Processed for Non-correctional Goals, Penological, Safety and Security and or for Public Safety purposes. (See Exhibit 6)

the petitioner submitted this Grievance twice to the director of corrections seeking its filing, a response, etc... to "Have" it "Returned" unprocessed for Non-correctional Goals, Penological, Safety and Security and or Public Safety purposes. (See Exhibit 8)

Such acts and actions of the director of corrections and his/her chief inmate appeal coordinator was perpetrated in order to "Deny" the Petitioner "court Access", the "Right" to "Petitioner" the Government for Redress, to Exercise the Right to Free

1 - dom of speech, due process
 2 of Law, etc... as guaran-
 3 teed under U.S.C.A. Const.
 4 Amendments. 1, 14 that requires
 5 relief.

6 7 POINTS AND AUTHORITIES IN 8 SUPPORT OF GROUND FIVE

9
 10 Per Calif. code of Reg.,
 11 title 15, Sec. 3084.1(2): Any in-
 12 mate or parolee under the de-
 13 partments jurisdiction may ap-
 14 peal any departmental decision
 15, action, condition, or policy
 16 which they can demonstrate
 17 as having an adverse effect
 18 upon their welfare. The deci-
 19 sion of the Departmental Re-
 20 view Board which serve as
 21 the director's level decision
 22 are not appealable and con-
 23 clude the inmate's or parolee's
 24 departmental administrative
 25 remedy pursuant to Section
 26 3376.1.

27
 28 Per Calif. code of Reg.,

1 title 15, Sec. 3084.3(e)(6): Time
 2 limits for Submitting the ap-
 3 peal are exceeded and the
 4 appellant had the opportunity
 5 to file within the prescribed
 6 time constraints.

7
 8 Per Calif. code of Reg.,
 9 title 15, Sec. 3084.6(a): com-
 10 mencement. time limits for
 11 Submitting or reviewing ap-
 12 peals shall commence upon the
 13 date of receipt of the appeal
 14 document by the appeals coor-
 15 dinator or the appellant.

16
 17 In *Wheis v. Reno*, 204
 18 F.3d 65 (3rd cir. 2000) this
 19 court ruled that "substantial
 20 compliance with the grievance
 21 Procedure will satisfy exhaustion
 22 requirement."

23
 24 In *Harper v. Jenkins*,
 25 179 F.3d 1311 (11th cir. 1999) this
 26 court ruled that a "Prisoner
 27 who filed an untimely grie-
 28 vance was obliged to seek

1 a waiver of the time limits
2 in the grievance system."

3
4 And in *Underwood v.*
5 *Wilson*, 151 F.3d 292 (5th Cir.
6 1998) this court wrote that
7 "exhaustion requirement may
8 be subject to waiver".

9
10 As well, in *Glendale City*
11 *Employees' Association, Inc. v.*
12 *City of Glendale* (1975) 15 Cal.
13 3d 328, 342, 124 Cal. Rptr. 513, 522
14 the California Supreme court
15 wrote that "the requirement
16 of exhaustion of administrative
17 remedies does not apply if the
18 remedy is inadequate." (See
19 also *In re Reine* (Cal. App. 4th
20 Dist. 1985) 171 Cal. App. 3d 638, 642,
21 217 Cal. Rptr. 535, 537, N. 2; *in*
22 *re Thompson* (Cal. App. 5th Dist.
23 1985) 172 Cal. App. 3d 256, 262,
24 218 Cal. Rptr. 192, N. 5, 6.)

25
26 In this matter, the peti-
27 tioner sought review at the
28 third and final level in a

1 timely fashion, sought to be
2 excused if the reviewer
3 assumed that this grievance
4 wasn't filed timely, (see p.
5 6 of Exhibit 4) filed a se-
6 cond grievance in an attempt
7 to get the grievance log
8 # CAL-A-05-0468 filed all to
9 be denied and all recourse
10 that made this process "fu-
11 tile", demonstrating this grie-
12 -vance system "inadequacy"
13 constituting "Exhaustion" and
14 measures were perpetrated
15 by prison officials for non-
16 -correctional goals, penological,
17 safety and security and or
18 public safety purposes, there-
19 fore resulting in the Peti-
20 tioner's constitutional rights
21 violations to court access, to
22 petition the Government for
23 redress, the right to free-
24 -dom of speech, Due Process
25 of Law, etc... as guaranteed
26 U.S.C.A. const. Amends. 1,
27 14 that requires relief.

1 GROUND SIX: The Misclassification
 2 tion of this RVR and the
 3 Allegations that the Petitioner
 4 was charged with (Denial of
 5 Notice and the Opportunity to
 6 Be Heard)

7
 8 Facts: Upon the issuance of
 9 this RVR, the petitioner wasn't
 10 given "Notice" and or the "Opportunity"
 11 to be "Heard" regarding
 12 this charge and the rule al-
 13 legedly violated in violation of
 14 the petitioner's statutory and
 15 constitutional rights to due
 16 process of law.

17
 18 If this RVR is examined
 19 for the alleged CDC rule that
 20 the petitioner allegedly violated
 21, it would reflect a violation of
 22 C.C.R. Title 15, Sec. 3005(b) and
 23 "Not" a "violation" of C.C.R.
 24 Title 15, Sec. 3005(c) since the
 25 petitioner was charged with
 26 battery with a weapon. (See
 27 Exhibit 2)

1 IF C.C.R. title 15, sec.
 2 3005(b) is read, it would be
 3 noted that it states: "Obey-
 4 ing orders. Inmates and paro-
 5 lees must promptly and cour-
 6 -teously obey written and
 7 verbal orders and instructions
 8 from department staff, and
 9 from employees of other
 10 agencies with authorized re-
 11 sponsibility for the custody
 12 and supervision of inmates and
 13 parolees".

14
 15 IF C.C.R. title 15, sec.
 16 3323(f)(6) is read, it would be
 17 noted that this section doesn't
 18 warrant the imposition of a
 19 (15) fifteen month Sth term,
 20 the loss of (360) three hun-
 21 dred sixty days credit, (28)
 22 twenty eight additional points,
 23 etc... but the loss of 61-
 24 90 days, 6 additional points,
 25 no Sth term, etc... Per
 26 C.C.R. Title 15, Secs. 3323(f)
 27 (b), 3341.5(c)(9)(B), and 3375.
 28 4(b)(1) for the violation of

1 Sec. 3005 (b). But if c.c.R.
 2 title 15, Sec. 3005(c) is read,
 3 it would state: "Force or
 4 violence. Inmates shall not
 5 willfully commit or assist
 6 another person in the com-
 7 mission of a violent in-
 8 jury to any person or persons,
 9 including self mutilation or
 10 attempted suicide, nor attempt
 11 or threaten the use of force
 12 or violence upon another person.
 13 Inmates shall not willfully
 14 attempt to incite others, either
 15 verbally or in writing, or by
 16 other deliberate action, to use
 17 force or violence upon another
 18 person" and that Sec. 3323
 19 (b)(4) warrants the loss of
 20 181-360 days of credit for
 21 the battery of an inmate
 22 with a weapon, that Sec.
 23 3341.5(c)(4)(B)(2) governs the
 24 implementation of a (15) fif-
 25 teen month stay term, and
 26 that Secs. 3375.4(b)(4) and (b)(5)
 27 warrants the addition of (28)
 28 twenty-eight points for a

1 battery on an inmate with a
 2 weapon. So as shown, the
 3 misclassification of this RVR
 4 that did not coincide with the
 5 allegations that the Petitioner
 6 was charged with, did not place
 7 the Petitioner on Notice and
 8 or give him the opportunity
 9 to be heard regarding these
 10 allegations and wasn't perform-
 11 -ed for correctional goals, penal-
 12 -logical, safety and security
 13 and or public safety purposes
 14 in violation of the Petitioner's
 15 statutory and constitutional
 16 rights to Due Process of Law
 17 as guaranteed under U.S.C.A.
 18 Const. Amend. 14 that requires
 19 relief.

20
 21 POINTS AND AUTHORITIES IN SUP
 22 -PORT OF GROUND SIX

23
 24 In *Wolff v. McDonnell* (1974)
 25 418 U.S. 539, 563-564, 94 S. Ct.
 26 2963, 41 L. Ed. 2d 935 at 955-956,
 27 this court wrote that "Two of
 28 the procedures that the court

held should be extended to parolees facing revocation proceedings are not, but must be, provided to prisoners in the Nebraska complex if the minimum requirements of procedural due process are to be satisfied. These are advance written notice of the claimed violation and a written statement of the fact findings as to the evidence relied upon and the reasons for the disciplinary action taken."

This court continued by writing in part that "part of the function of notice is to give the charged party a chance to marshal the facts in his defense and to clarify what the charges are, in fact."

At 418 U.S. p. 564, 94 S. Ct. 2963, 41 L.Ed. 2d 21 956, this court further wrote in

1 part that "we hold that writ-
 2 ten notice of the charges
 3 must be given to the disci-
 4 plinary - action defendant in
 5 order to inform him of the
 6 charges and to enable him
 7 to marshal the facts and
 8 prepare a defense. At least
 9 a brief period of time after
 10 the notice, no less than 24
 11 hours, should be allowed to
 12 the inmate to prepare for
 13 the appearance before the
 14 Adjustment Committee."

15
 16 In *Clutcher v. F. Procunier*
 17 (9th Cir. 1974) 497 F.2d 809
 18 at P. 818 this court ruled
 19 in part "that an essential
 20 element in any system of
 21 minimum procedural safeguards
 22 is providing the accused in-
 23 mate with specific notice of
 24 the charges against him. Ade-
 25 -quate notice has been held
 26 by our circuit to be an in-
 27 -dispensible ingredient of
 28 minimum due process in the

1 Prison context and it has
2 been unanimously viewed as
3 a necessary safeguard in
4 prison disciplinary proceedings
5 • the notice must inform the
6 inmate of the charges against
7 him and of the details of
8 his alleged offense, it must
9 be promptly delivered to him
10 and must be received suffi-
11 ciently in advance of the
12 hearing to enable him to
13 prepare any defense he may
14 have. Moreover, to permit pre-
15 sentation of an effective
16 defense and to facilitate the
17 therapeutic value of a fair
18 and impartial disciplinary
19 hearing, the prisoner should
20 also receive a written explen-
21 -ation of the procedures that
22 will be employed at the dis-
23 ciplinary proceedings and a
24 statement of his rights (and
25 the limitation of those rights)
26 under the hearing rules."

27
28 In this matter, the peti

1 -itioner was Not given Notice
 2 of the Allegations (rule vio-
 3 lation) as charged and or
 4 the opportunity to be heard
 5 in this matter based upon
 6 the misclassification of
 7 this RVR by staffs and the
 8 allegations as asserted not
 9 coinciding with the allege
 10 rule violation as committed.

12 If Exhibit 1 is exam-
 13 ined, it would be noted that
 14 the Petitioner is charged with
 15 violating c.c.R. title 15, Sec.
 16 3005(b) Disobeying orders,
 17 but the allegations of this
 18 RVR accuses the Petitioner
 19 of committing an act of
 20 Force or Violence in which
 21 would be a violation of c.c.R.
 22 Title 15, Sec. 3005(c) Force
 23 or violence in which is
 24 what the petitioner wasn't
 25 charged with for non-cor-
 26 rectional goals, Penological,
 27 safety and security and or
 28 Public Safety Purposes there-

1 fore violating the Petitioners
2 Statutory and Constitutional
3 Rights to Due Process of
4 Law as guaranteed under
5 U.S.C.A. Const. Amend. 14.
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GROUND SEVEN: The FAILURE
TO CONSIDER MITIGATING
FACTORS IN THE PETITION-
ER'S FAVOR

Facts: When this Hearing Officer proceeded to hear this RVR, the petitioner attempted to bring to this Hearing Officers attention that the petitioner hasn't been given a set term in over eleven years, hasn't received an RVR in over two years prior to this incident, doesn't have a history of force or violence, committing such acts, etc. (see Exhibit 3) in which this Hearing Officer deliberately "Failed" to and blatantly "Refused" to "Consider" these factors before reaching his determination (see Exhibit 1) in violation of the petitioner's statutory and constitutional rights to Due Process.

1 per c.c.r. Title 15, Sec.
2 3341.5(c)(10) Factors in Mitig-
3 ation or Aggravation of
4 the Term. the the term
5 shall be set at the ex-
6 pected range unless a classi-
7 -fication committee finds
8 factors exist which warrant
9 the imposition of a lesser
10 or greater period of confine-
11 ment. the total period of
12 confinement assessed shall
13 be no less than nor greater
14 than the lowest or highest
15 months listed for the offense
16 in the the Term Assessment
17 chart. In setting the term,
18 the committee shall deter-
19 mine the base offense. If
20 the term being assessed
21 includes multiple offenses,
22 the offense which provides
23 for the longest period of
24 confinement shall be the
25 base offense. Lesser of-
26 fenses will be used to
27 increase the period beyond
28 the expected term. After

1 determining the base offense
 2, the committee shall review
 3 the circumstances of the
 4 disciplinary offense and the
 5 inmate's institutional behavior
 6 history using the factors be-
 7 -low. The committee shall
 8 then determine that either
 9 no unusual factors exist or
 10 find that specific aggravat-
 11 ing or mitigating factors do
 12 exist and specify a greater
 13 or lesser term. The reasons
 14 for deviation from the ex-
 15 pected term shall be docu-
 16 mented on a CDC 128-G,
 17 classification chrono, and the
 18 Term Assessment worksheet,
 19 a copy of which shall be
 20 provided to the inmate.

21 22 Section 3341.5(10)(A)

23 Factors in Mitigation. 1. the
 24 inmate has a minor or no
 25 prior disciplinary history. 2.
 26 the inmate has not been
 27 involved in prior acts of the
 28 same or of a similar na-

ture. 3 The misconduct was situational and spontaneous as opposed to planned in nature. 4. the inmate was influenced by others to commit the offense. 5 the misconduct resulted, in part, from the inmate's fear for safety.

Section 3341.5(10)(B)

Factors in Aggravation. 1. the inmate's prior disciplinary record includes acts of misconduct of the same or similar nature. 2. the misconduct was planned and executed as opposed to situational or spontaneous. 3. the misconduct for which a sentence is being assessed resulted in a finding of guilt for more than one offense. 4. the inmate influenced others to commit serious disciplinary infractions during the time of the offense. In the petitioner's case, this Hearing Officer

1 never considered such factors
 2 in order to present them
 3 to an I.C.C. hearing for it
 4 to consider with the SHU
 5 Assessment chart that de-
 6 -prived the petitioner of the
 7 ability to receive a lesser
 8 SHU term, lost of time,
 9 lesser classification score
 10 points added, etc... in viola-
 11 tion of the petitioner's statu-
 12 -tory and constitutional rights
 13 to due process for non-cor-
 14 -rectional goals, penological,
 15 safety and security and or
 16 public safety purposes that
 17 requires relief.

18
 19 POINTS AND AUTHORITIES IN
 20 SUPPORT OF GROUND SEVEN

21
 22 In *Wolf v. McDonnell*
 23 (1974) 418 U.S. 539, 571, 94 S.Ct.
 24 2963, 41 L.Ed. 2d 935, 959 this
 25 court wrote in part that "the
 26 committee is not left at
 27 large with unlimited direction.
 28 It is directed to meet

1 daily and to operate within
 2 the principals stated in the
 3 controlling regulations, among
 4 which is the command that
 5 "Full consideration must be
 6 given to the causes for the
 7 adverse behavior, the setting
 8 and circumstances in which
 9 it occurred, the man's ac-
 10 countability, and the correc-
 11 tional treatment goals," as
 12 well as the direction that "dis-
 13 ciplinary measures will be
 14 taken only at such times
 15 and to such degrees as are
 16 necessary to regulate and
 17 control a man's behavior
 18 within acceptable limits and
 19 will never be rendered capri-
 20 cious or in the nature of
 21 retaliation or revenge."

22
 23 In this matter, no such
 24 precautions were taken and
 25 such acts were perpetrated
 26 for non-correctional goals,
 27 penological, safety and security
 28 and or public safety purposes

1 in violation of the Petitioners
2 Statutory and constitutional
3 rights to Due Process as
4 guaranteed under U.S.C.A.
5 Const. Amend. 14 that re-
6 quires relief.

23. Do you have any petition or appeal **now pending** in any court, either state or federal, pertaining to the judgment under attack?

☐ Yes ☒ No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court: _____

(b) Case Number: _____

(c) Date action filed: _____

(d) Nature of proceeding: _____

(e) Name(s) of judges (if known): _____

(f) Grounds raised: _____

(g) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☐ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: None

(b) At arraignment and plea: None

(c) At trial: None

(d) At sentencing: None

(e) On appeal: None

(f) In any post-conviction proceeding: None

(g) On appeal from any adverse ruling in a post-conviction proceeding: None

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

☒ Yes ☐ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☐ Yes ☒ No

(a) If so, give name and location of court that imposed sentence to be served in the future:

(b) Give date and length of the future sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

☒ Yes ☐ No

28. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 2254 habeas cases filed in this district, the parties may waive their right to proceed before a district judge and consent to magistrate judge jurisdiction. Upon consent of all the parties under 28 U.S.C. § 636(c) to such jurisdiction, the magistrate judge will conduct all proceedings including the entry of final judgment. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to consent to a magistrate judge as it will likely result in an earlier resolution of this matter. If you request that a district judge be designated to decide dispositive matters, a magistrate judge will nevertheless hear and decide all non-dispositive matters and will hear and issue a recommendation to the district judge as to all dispositive matters.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including the entry of final judgment, by indicating your consent below.

Choose only one of the following:

☒ Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR

☐ Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

29. Date you are mailing (or handing to a correctional officer) this Petition to this court: _____

August 26th, 2008

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.



SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

Aug. 26th, 2008

(DATE)



SIGNATURE OF PETITIONER

Final copy of
C.D.C. 113

EX. 1

REC'D CAL APPEALS

MAR 11 2005

45 132L

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT

| | | | | | |
|---|------------------------------|---|-----------------------------|-------------------------------|------------------------------|
| CDC NUMBER H-67149 | INMATE'S NAME HILL | RELEASE/BOARD DATE LWOP | INST. CSP-CAL | HOUSING NO. A3-134L | LOG NO. 01-05-A-04 |
| VIOLATED RULE NO(S). 3005 (b) | | SPECIFIC ACTS BATTERY ON AN INMATE W/WEAPON | LOCATION A3-Floor | DATE 01/19/05 | TIME 1716 |

On Wednesday, January 19, 2005, at approximately 1716 hours while performing my duties as A3-Control Booth Officer I observed Inmate HILL, H-67149 pick up a broom from the lower tier and go up the stairs. HILL was going in the direction of "A" Section upper tier. Inmate HILL started striking Inmate MARTIN, K-65209 with the Broom Handle and striking him in the upper torso and head in front of cell 212. I ordered both inmates to get down but they did not comply. I fired One (1) round from my 40mm Direct Impact Weapon, Serial #GSO902 and aimed at inmate 1 at the assailant Inmate HILL. After I fired Inmate MARTIN pruned out in front of cell 212 and Inmate HILL ran towards the stairwell in front of cell 205. I instructed Inmate HILL to prone out on the tier. I continued to cover the area until both inmates were removed from the building. Later after reviewing the medical report I found out that Inmate MARTIN was struck in the lower leg but I aimed at Inmate HILL but struck MARTIN due to the wrestling on the tier. Inmate HILL is not a participant in the Mental Health Services Delivery System (MHSDS). Inmate HILL is aware of this report.

| | | | | |
|--|---|-------------------------|---|--|
| REPORTING EMPLOYEE (Typed Name and Signature) T. DAVIS, Correctional Officer | | DATE 01/19/05 | ASSIGNMENT A3-Control Booth | RDO'S Mon/Tue |
| REVIEWING SUPERVISOR'S SIGNATURE V. BACH, Correctional Sergeant | | DATE 1/19/05 | <input type="checkbox"/> INMATE SEGREGATED PENDING HEARING | |
| CLASSIFIED <input type="checkbox"/> ADMINISTRATIVE <input checked="" type="checkbox"/> SERIOUS | OFFENSE DIVISION: A1 | DATE 1/19/05 | CLASSIFIED BY (Typed Name and Signature) G. RAPOZA, LT. | HEARING REFERRED TO <input type="checkbox"/> HO <input checked="" type="checkbox"/> SHO <input type="checkbox"/> SC <input type="checkbox"/> FC |
| COPIES GIVEN INMATE BEFORE HEARING | | | | |
| <input checked="" type="checkbox"/> CDC 115 | BY: (STAFF'S SIGNATURE) [Signature] | DATE 1/19/05 | TIME 930 | TITLE OF SUPPLEMENT copy of 744 incident report |
| <input checked="" type="checkbox"/> INCIDENT REPORT LOG NUMBER: AL 105-2005-25 | BY: (STAFF'S SIGNATURE) [Signature] | DATE 4/8/05 | TIME [Blank] | BY: (STAFF'S SIGNATURE) [Signature] |

HEARING

CONTINUED ON RVR PART C

REFERRED TO ☐ CLASSIFICATION ☐ BPT/NAEA

| | | | | |
|---|--|---|------------------------|------------------------|
| ACTION BY: (TYPED NAME) J. JIMENEZ, CORRECTIONAL LIEUTENANT | | SIGNATURE [Signature] | DATE 2/1/05 | TIME 1130 |
| REVIEWED BY: (SIGNATURE) W. PRICE, FACILITY CAPTAIN | | CHIEF DISCIPLINARY OFFICER'S SIGNATURE G. JANDA, ASSOCIATE WARDEN A/B | DATE 2/23/05 | TIME [Blank] |
| <input type="checkbox"/> COPY OF CDC 115 GIVEN INMATE AFTER HEARING | | BY: (STAFF'S SIGNATURE) [Signature] | DATE 3/25/05 | TIME 1600 |

CDC 115 (7/88)

I received on

STATE OF CALIFORNIA
SERIOUS RULES VIOLATION REPORT
APPEALS

05 0468

| | | | | | |
|-----------------------|-----------------------|-------------------------------|------------------|------------------------|------------------------|
| CDC NUMBER H-67149 | INMATE'S NAME HILL | INMATE'S RULE NO. 3005 (b) | DATE 01/19/05 | INSTITUTION CSP-CAL | LOG NO. 01-05-A-043 |
|-----------------------|-----------------------|-------------------------------|------------------|------------------------|------------------------|

REFERRAL FOR FELONY PROSECUTION IS LIKELY IN THIS INCIDENT ☒ YES ☐ NO

POSTPONEMENT OF DISCIPLINARY HEARING

| | | |
|---|--|----------------|
| <input checked="" type="checkbox"/> I DO NOT REQUEST my hearing be postponed pending outcome of referral for prosecution. | INMATE'S SIGNATURE <i>[Signature]</i> | DATE 2/1/05 |
| <input type="checkbox"/> I REQUEST my hearing be postponed pending outcome of referral for prosecution. | INMATE'S SIGNATURE | DATE |

| | |
|---------------------------------|-------------|
| DATE NOTICE OF OUTCOME RECEIVED | DISPOSITION |
|---------------------------------|-------------|

| | | |
|--|--|------|
| <input type="checkbox"/> I REVOKE my request for postponement. | INMATE'S SIGNATURE <i>[Signature]</i> | DATE |
|--|--|------|

STAFF ASSISTANT

| | | | |
|--|--|--|------|
| <input type="checkbox"/> REQUESTED | <input type="checkbox"/> WAIVED BY INMATE | INMATE'S SIGNATURE <i>[Signature]</i> | DATE |
| <input type="checkbox"/> ASSIGNED | DATE | NAME OF STAFF | |
| <input checked="" type="checkbox"/> NOT ASSIGNED | REASON Does not meet criteria per CCP 33's (1)(2) | | |

INVESTIGATIVE EMPLOYEE

| | | | |
|--|---|--|------|
| <input type="checkbox"/> REQUESTED | <input type="checkbox"/> WAIVED BY INMATE | INMATE'S SIGNATURE <i>[Signature]</i> | DATE |
| <input checked="" type="checkbox"/> ASSIGNED | DATE 3/1/05 | NAME OF STAFF N. METIA | |
| <input type="checkbox"/> NOT ASSIGNED | REASON | | |

EVIDENCE / INFORMATION REQUESTED BY INMATE: At the time of hearing, Inmate Hill stated he accepted the questions and answers from Officer Gomez who is documented in the I.E. Report. Officer Gomez is currently out on medical leave.

WITNESSES REQUESTED AT HEARING (IF NOT PRESENT, EXPLAIN IN FINDINGS)

☐ REPORTING EMPLOYEE ☐ STAFF ASSISTANT ☐ INVESTIGATIVE EMPLOYEE ☐ OTHER ☐ NONE

| WITNESSES (GIVE NAME AND TITLE OR CDC NUMBER) | | GRANTED | NOT GRANTED | WITNESSES (GIVE NAME AND TITLE OR CDC NUMBER) | | GRANTED | NOT GRANTED |
|---|--|-------------------------------------|--------------------------|---|--|--------------------------|--------------------------|
| Off Gomez | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | | | <input type="checkbox"/> | <input type="checkbox"/> |
| Off Rocha | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | | | <input type="checkbox"/> | <input type="checkbox"/> |

INVESTIGATIVE REPORT: Investigative Employees must interview the inmate charged, the reporting employee, and any others who have significant information, documenting the testimony of each person interviewed. Review of files, procedures, and other documents may also be necessary.

SHO NOTE: Immediately after the SHO noted Inmate Hill's acceptance of the questions & answers from Officer Gomez, Inmate Hill stated he wasn't going to sign, noting his acknowledgment of his verbal acceptance. Correctional Officer Steele was present during his verbal acceptance and his refusal. The SHO decided to proceed with the hearing. The SHO was able to review Officer Gomez's answers in the I.E. Report. *[Signature]*

| | | |
|--|---|----------------|
| INVESTIGATOR'S SIGNATURE <i>[Signature]</i> | | DATE 2/1/05 |
| <input checked="" type="checkbox"/> COPY OF CDC 115-A GIVEN INMATE | BY: (STAFF'S SIGNATURE) <i>[Signature]</i> | TIME 19:30 |

STATE OF CALIFORNIA

MAR 11 2005

DEPARTMENT OF CORRECTIONS
PAGE 1 OF 2

RULES VIOLATION REPORT - PART C

| | | | | |
|--|-----------------------|---------------------------|------------------------|---------------------------|
| CDC NUMBER H-67149 | INMATE'S NAME HILL | LOG NUMBER 01-05-A-043 | INSTITUTION CAL-CSP | TODAY'S DATE FEB-16-05 |
| <input type="checkbox"/> SUPPLEMENTAL <input type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input checked="" type="checkbox"/> HEARING <input type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER | | | | |

On Wednesday, February 16, 2005, at approximately 2000 hours, Inmate HILL, H-67149, appeared before this Senior Hearing Officer (SHO) for adjudication of Rules Violation Report, CDC-115, Log Number 01-05-A-043. I introduced myself and explained Hearing Rules & Procedures to Inmate HILL, who stated he was in sound physical health. Inmate HILL is not a participant in the Mental Health Services Delivery System, the Disability Placement Program, or the Developmental Disability Program.

DUE PROCESS: Inmate HILL received all pertinent documents twenty four (24) hours prior to the hearing. All time constraints have been met. There are no due process errors.

STAFF ASSISTANT: A Staff Assistant was not assigned per CCR #3315(D)(2).

INVESTIGATIVE EMPLOYEE: Correctional Officer N. MEJIA was assigned on 01/19/05.

INMATES PLEA: The charges were read to Inmate HILL and he plead NOT GUILTY.

INMATE STATEMENT: Inmate HILL stated: "I told the officers that we had problems, and were not getting along."

WITNESSES: Witnesses were requested and granted. Inmate HILL requested Correctional Officer ROCHA as a witness and this request was granted by the SHO.

Correctional Officer ROCHA was asked the following questions from Inmate HILL via the SHO.

Q: On January 19, 2005, did I tell you that my cellie and I were not getting along and I needed a move?

A: No, they did request a bed move, they never said anything about not getting along.

Q: On January 19th, 2005, did I, Inmate HILL, H-67149, between the hours of 3 and 4 p.m., inform you, C/O T. ROCHA, that I needed to be released from my cell in order to retrieve my radio because me and Inmate MARTIN K-65209, were not getting along (non-compatible) so I can try to get a cell move?

A: No, I don't recall.

The SHO elected to ask the following questions of Correctional Officer ROCHA.

Q: Did you see inmate HILL and MARTIN square off prior to inmate HILL striking him with the broom?

A: No, I was at the chow hall when this happened.

| | | | |
|--|--|------------------------|---------------------|
| SIGNATURE OF WRITER J. JIMENEZ, CORRECTIONAL LIEUTENANT | | DATE SIGNED 2-23-05 | |
| GIVEN BY: (Staff's Signature) [Signature] | | DATE SIGNED 3/3/5 | TIME SIGNED 1600 |



COPY OF CDC 115-C GIVEN TO INMATE

MAR 11 2005

A5132L

STATE OF CALIFORNIA

RULES VIOLATION REPORT - PART C

| | | | | |
|---------------------------------------|---|-------------|-------------|--------------|
| CDC NUMBER | INMATE'S NAME | LOG NUMBER | INSTITUTION | TODAY'S DATE |
| H-67149 | HILL | 01-05-A-043 | CAL-CSP | FEB-16-05 |
| <input type="checkbox"/> SUPPLEMENTAL | <input checked="" type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input checked="" type="checkbox"/> HEARING <input type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER | | | |

Correctional Officer GOMEZ was requested as a witness, however at the time of the hearing, Inmate HILL stated he accepted the questions and answers from Officer GOMEZ which is documented in the I.E. Report. Officer GOMEZ is currently out on medical leave. Immediately after the SHO noted Inmate HILL's acceptance of the questions and answers for Officer GOMEZ, Inmate HILL stated he wasn't going to sign, noting his acknowledgment of his verbal acceptance. Correctional Officer Steele was present during his verbal acceptance and his refusal. The SHO elected to proceed with the hearing, the SHO was able to review Officer GOMEZ's answers via the I.E. report.

During the I.E. Report, Inmate HILL submitted questions regarding the Reporting Employees employment conduct record. The SHO determined that this information was confidential and not relevant to this CDC-115 hearing.

FINDINGS: Inmate HILL was found GUILTY of having violated CCR# 3005 (b), for the Specific Act of "BATTERY ON AN INMATE WITH A WEAPON". This finding is based upon a preponderance of the evidence as submitted during the hearing, which is considered valid and substantiates the charge. The evidence includes:

A: The Reporting Employee's written report, which states in part: I observed Inmate HILL pick up a broom from the lower tier and go up the stairs. HILL was going in the direction of "A" Section upper tier. Inmate HILL started striking Inmate MARLIN with the broom handle and striking him in the upper torso and head in front of cell 212.

B: The SHO reviewed all reports relevant to the CDC-115 hearing. The SHO is convinced that Inmate HILL willfully battered Inmate MARLIN with the broom handle. The SHO determined that Inmate HILL utilized the broom as a weapon to cause serious harm to Inmate MARLIN by striking him in the upper torso and head area.

DISPOSITION: Inmate HILL was assessed:

360 days FORFEITURE OF CREDIT, consistent with a Division "A1" Offense.
10 days LOSS OF YARD, Beginning 02/16/05 and Ending 02/26/05.

Inmate HILL was counseled, reprimanded and advised of future behavior expectations.

Inmate HILL is referred to Institutional Classification Committee (ICC) with the recommendation that the appropriate Security Housing Unit (SHU) term be assessed.

Inmate HILL is also referred to the Institutional Psychiatrist for evaluation prior to assessment of a SHU term, per the Madrid Decision.

Inmate HILL was advised of his rights to appeal the findings and/or disposition of the hearing, pursuant to CCR§, Section 30841.1 and also advised that he would receive a completed copy upon final audit by the Chief Disciplinary Officer (CDO). The review and signature of the CDO affirms, reverses, or modifies the disciplinary action and/or Credit Forfeiture and constitutes the First Level for Appeal.

| | | | |
|---|-------------------------------------|-------------|-------------|
| <input checked="" type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE | SIGNATURE OF WRITER | | DATE SIGNED |
| | J. JIMENEZ, CORRECTIONAL LIEUTENANT | | 2/23/05 |
| | GIVEN BY: (Staff's Signature) | DATE SIGNED | TIME SIGNED |
| | [Signature] | 3/3/5 | 1600 |

MAR 11 2005

STATE OF CALIFORNIA

RULES VIOLATION REPORT - PART C

| | | | | |
|---------------------------------------|--|---------------------------|------------------------|--------------------------|
| CDC-NUMBER H-67149 | INMATE'S NAME HILL | LOG NUMBER 01-05-A-043 | INSTITUTION CSP-CAL | TODAY'S DATE 02/08/05 |
| <input type="checkbox"/> SUPPLEMENTAL | <input type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input type="checkbox"/> HEARING <input checked="" type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER | | | |

On Tuesday, February 08, 2005, I informed Inmate HILL, H-67149, A3-132L, that I had been assigned as the Investigative Employee for Rules Violation Report, Log #01-05-A-043 charging him with violation of CCR #3005 (b). I explained to Inmate HILL that my function was to: collect information, interview him, the Reporting Employee and all witnesses having information about the incident. Inmate HILL stated that he understood my function and expressed no objections to my assignment. Therefore, as the assigned and accepted Investigator, I conducted the investigation and submit the findings in this report.

CHARGED INMATE STATEMENT: On Saturday, February 08, 2005, at approximately 1935 hours, I interviewed Inmate HILL who the following:

STATEMENT: " I have no statement."

On Tuesday, February 08, 2005, at approximately 1950 hours I interviewed Correctional Officer T. DAVIS, who stated the following:

STATEMENT: " On Wednesday, January 19, 2005, at approximately 1716 hours, I observed Inmate HILL, H-67149 pick up a broom from the lower tier and go up the stairs. HILL was going in the direction of "A" section upper tier. Inmate HILL started to strike Inmate MARJIN, K-65209 with the broom handle and striking him in the upper torso and head in front of cell 212. I ordered both inmates to get down with negative results. I fired one (1) round from my 40mm direct impact weapon, serial # GS0902 and aimed at zone 1 at assailant Inmate HILL, after I fired Inmate MARJIN prone out in front of cell 212 and Inmate HILL ran towards the stairwell in front of 205. I instructed Inmate HILL to prone out on the tier. I continued to cover the area until both inmates were removed from the building. Later after reviewing the medical report I found out that Inmate MARTIN was struck in the lower leg but aimed at Inmate HILL but struck MARJIN due to the wrestling on the tier.

On Wednesday, February 09, 2005, at approximately 1950 hours, I interviewed Correctional Officer T. ROCHA, who answered the following questions.

1.(Q) On January 19, 2005, did I, Inmate HILL, H-67149 between the hours 3 and 4 PM, inform you, Correctional Officer T. ROCHA that my self and Inmate MARTIN, K-65209 were not getting along (non compatible) and that I wanted to move?

(A) Inmate HILL requested a bedmove. I informed the Sergeant who said convenience moves are done on 2nd watch. Inmate HILL never said it was an urgent matter.

2.(Q) On January 19, 2005, did Inmate HILL, H-67149, between the hours of 3 and 4 PM inform you, Correctional Officer T. ROCHA that I needed to be released from my cell in order to retrieve my radio because me and Inmate MARTIN, K-65209 were not getting along (non compatible) so I can try to get a cell move?

(A) No.

| | | | |
|---|--|------------------------|---------------------|
| SIGNATURE OF WRITER I N. MEJIA, Correctional Officer | | DATE SIGNED 2-15-05 | |
| GIVEN BY: (Staff's Signature) <i>[Signature]</i> | | DATE SIGNED 2-15-05 | TIME SIGNED 2000 |
| <input checked="" type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE | | | |

STATE OF CALIFORNIA

REC'D CAL APPEALS

MAR 11 2005

DEPARTMENT OF CORRECTIONS

PAGE ___ OF ___

RULES VIOLATION REPORT - PART C

| | | | | |
|--|-----------------------|---------------------------|------------------------|--------------------------|
| CDC NUMBER H-67149 | INMATE'S NAME HILL | LOG NUMBER 01-05-A-043 | INSTITUTION CSP-CAL | TODAY'S DATE 02/08/05 |
| <input type="checkbox"/> SUPPLEMENTAL <input type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input type="checkbox"/> HEARING <input checked="" type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER | | | | |

On Thursday, February 10, 2005, at approximately 1655 hours I interviewed Correctional Officer GOMEZ, who answered the following questions.

1.(Q) On January 19, 2005, did I, Inmate HILL, H-67149, between the hours of 3 and 4 PM inform you, Correctional Officer H. GOMEZ that my self and Inmate MARTIN, K-65209 were not getting along (non compatible) and that I wanted to move?

(A) He stated he wanted a bed move, but did not state him and his cellie were not getting along.

2.(Q) On January 19, 2005, did I, Inmate HILL, H-67149 between the hours of 3:30 and 3:50 PM inform you, Correctional Officer H. GOMEZ, during your evening count that I needed to be released from my cell in order to retrieve some personal property because me and Inmate MAR|| K-65209 were not getting along (non compatible) and that I wanted to move?

(A) No.

3.(Q) On January 19, 2005, did I, Inmate HILL, H-67149 between the hours of 4:05 and 4:25 PM after you performed your evening count inform you Correctional Officer H. GOMEZ that I needed to move in which you informed me that no cell moves are performed on 3rd watch?

(A) Yes, however you never mentioned that you and your cellie were not getting along.

4.(Q) On January 19, 2005, did I, Inmate HILL, H-67149 between the hours 1700 and 1716 hours question you, Correctional Officer H. GOMEZ at the podium during the evening meal release about why you did not assist me in getting a cell move as well as in me getting my Superradio III?

(A) No, I told you that convenience moves were done during 2/W hours.

NOTHING FURTHER FROM INMATE HILL

INMATE HILL Requests' Correctional Officer's T. ROCHA and H. GOMEZ as witnesses.

Inmate HILL DOES NOT request the Reporting Employee at the hearing.

Inmate HILL DOES NOT request the Investigative Employee at the hearing.

Inmate HILL DOES NOT request Inmate witnesses at the hearing.

This concludes my report.

| | | | |
|---|--|------------------------|---------------------|
| SIGNATURE OF WRITER N. MENIA, Correctional Officer | | DATE SIGNED 2-15-05 | |
| GIVEN BY: (Staff's Signature) <i>[Signature]</i> | | DATE SIGNED 2-15-05 | TIME SIGNED 2000 |
| <input checked="" type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE | | | |

RECORDAL APPEALS
MAR 11 2005

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS
CDC 128 A (8-87)

NAME AND NUMBER HILL H-67149 A5-132

On Wednesday, February 16, 2005, at approximately 2000 hours, you appeared before Correctional Lieutenant J. JIMENEZ, for adjudication of CDC-115, Log #01-05-A-043. You were found GUILTY and assessed the following LOSS OF PRIVILEGES.

10 Days LOSS OF YARD, Beginning 02/16/05 and Ending 02/26/05.

ORIG: C-File

CC: Correctional Lieutenant

CC I

Housing Unit

Inmate

J. JIMENEZ, Correctional Lieutenant
Senior Hearing Officer
Facility "A" 3/W

(DISPOSITION OF CDC-115/LOSS OF PRIVILEGES)

DATE FEBRUARY 16, 2005

CUSTODIAL COUNSELING

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS
CDC 128 A (8-87)

NAME AND NUMBER HILL H-67149 A5-132

On Wednesday, February 16, 2005, at approximately 2000 hours, Inmate HILL appeared before Correctional Lieutenant J. JIMENEZ, for adjudication of CDC-115, Rules Violation Report, Log # 01-05-A-043, for the specific Act of "BATTERY ON AN INMATE WITH A WEAPON". Inmate HILL was found guilty and referred to Institutional Classification Committee with the recommendation for SHU Assessment. Inmate HILL is also referred to the Institutional Psychiatrist for evaluation before SHU Term assessment per the Madrid decision.

ORIG: C-File

CC: Correctional Lieutenant

CC I

Housing Unit

Inmate

J. JIMENEZ, Correctional Lieutenant
Senior Hearing Officer
Facility "A" 3/W

(MADRID/CHRONO)

DATE FEBRUARY 16, 2005

CUSTODIAL COUNSELING

7219 on

I/m martin

EX. 2

STATE OF CALIFORNIA

MEDICAL REPORT OF INJURY
OR UNUSUAL OCCURRENCE

| | | | | |
|--|--------------------------------|---|---|-------------------------------|
| NAME OF INSTITUTION CALIPATRIA | FACILITY/UNIT FAC A3 | REASON FOR REPORT (circle) INJURY USE OF FORCE UNUSUAL OCCURRENCE | ON THE JOB INJURY PRE AD/SEG ADMISSION | DATE 01/19/05 |
| THIS SECTION FOR INMATE ONLY | NAME LAST MARTIN | FIRST | CDC NUMBER K-65209 | HOUSING LOC. A3-134 |
| THIS SECTION FOR STAFF ONLY | NAME LAST | FIRST | BADGE # | RANK/CLASS |
| THIS SECTION FOR VISITOR ONLY | NAME LAST | FIRST | MIDDLE | DOB |
| | HOME ADDRESS | CITY | STATE | ZIP |
| | | | | HOME PHONE |

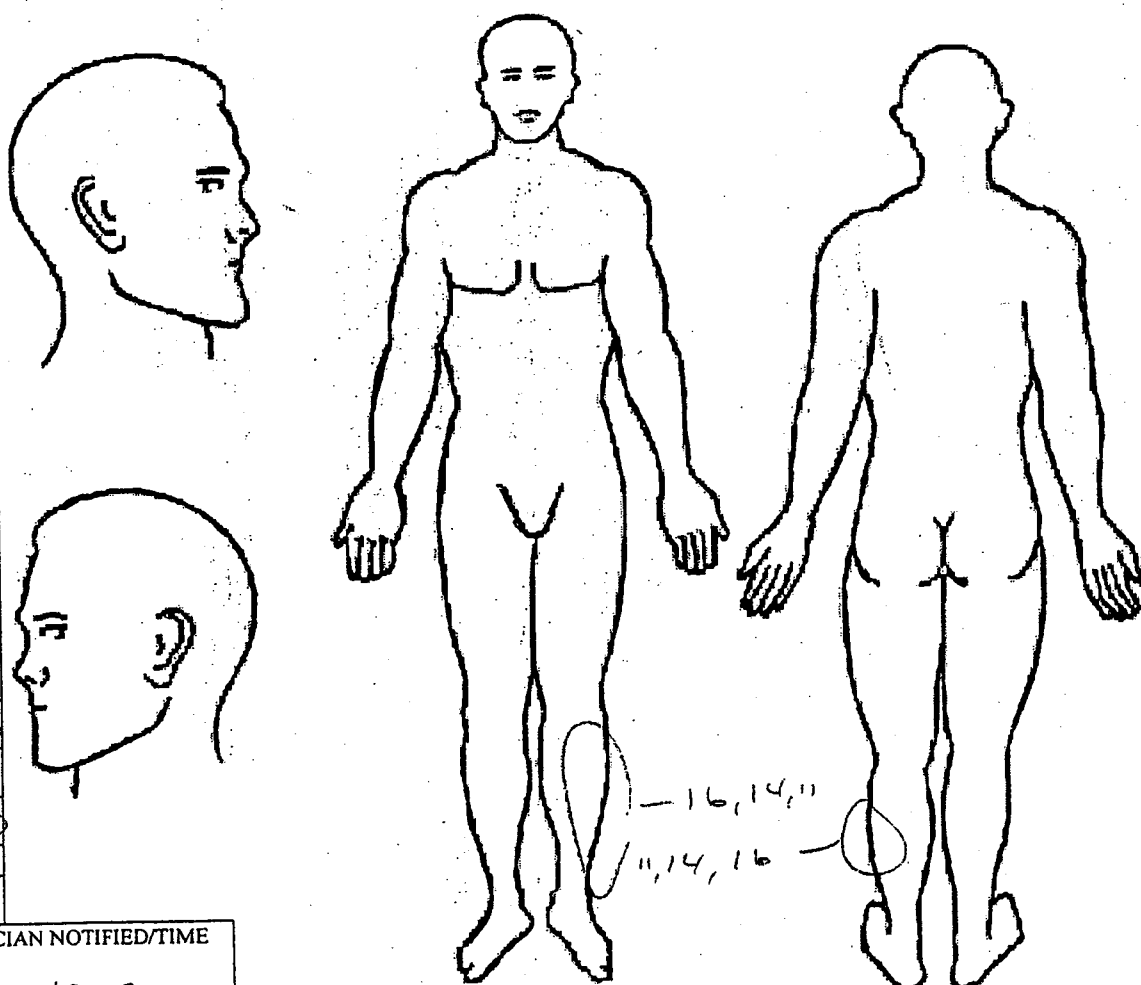
| | | |
|--|--|-------------------------------|
| PLACE OF OCCURRENCE A3-DAYROOM | DATE/TIME OF OCCURRENCE 01/19/05 1912 | NAME OF WITNESS(ES) |
| TIME NOTIFIED 1912 | TIME SEEN 1912 | ESCORTED BY on site |
| | MODE OF ARRIVAL (circle) AMBULATORY ON SITE | LITTER WHEELCHAIR |
| | AGE 31 | RACE B |
| | SEX M | |

BRIEF STATEMENT IN SUBJECT'S WORDS OF THE CIRCUMSTANCES OF THE INJURY OR UNUSUAL OCCURRENCE

"Hey! WTA my leg got big!" "I got hit by the cop with 2 round!"

INJURIES FOUND? (YES/NO)

| | |
|------------------------|----|
| Abrasion/Scratch | 1 |
| Active Bleeding | 2 |
| Broken Bone | 3 |
| Bruise/Discolored Area | 4 |
| Burn | 5 |
| Dislocation | 6 |
| Dried Blood | 7 |
| Fresh Tattoo | 8 |
| Cut/Laceration/Slash | 9 |
| O.C. Spray Area | 10 |
| Pain | 11 |
| Protrusion | 12 |
| Puncture | 13 |
| Reddened Area | 14 |
| Skin Flap | 15 |
| Swollen Area | 16 |
| Other | 17 |
| | 18 |
| | 19 |



O.C. SPRAY EXPOSURE? YES (NO)

DECONTAMINATED? YES (NO)

Self-decontamination instructions given? YES (NO)

Refused decontamination? YES (NO)

Q 15 min. checks

Staff issued exposure packet? YES (NO)

RN NOTIFIED/TIME

PHYSICIAN NOTIFIED/TIME

TIME/DISPOSITION

Reasons in custody

1935 1/19/05

REPORT COMPLETED BY/TITLE (PRINT AND SIGN)

L. [Signature] WTA

BADGE #

68709

RDOs

5/5

(Medical data is to be included in progress note or emergency care record filed in UHR)

EX. 3

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS
CDC-128G (REV. 2/69)

NO.: H-67149

NAME: HILL

HOUSING: 6A-2001

Custody: MAX CS: 87 LEVEL: IV WG/PG: D2/D

Eff: Date: 1/19/05 THRU MERD

Type/Release Date: MEPS 4/14/2018

TT: 25 Years To Life BPT: IPCH 3/2017 Assignment/Action Taken: SHU PROGRAM / IN PERSON /
RETAIN CCI-SHU / ASSESS 45 DAYS FOC RVR DTD 8-12-05, LOG #IVB-05-08-
0491 ADJUST MERD 2-12-06 / REAFFIRM IEM YARD & DOUBLE CELL

Inmate HILL's case was reviewed by UCC in person this date for the purpose of **SHU PROGRAM Review**. Subject stated that he was in good health and was ready to proceed. No Staff Assistant was assigned, as the Subject is not illiterate and the issues are not complex. Subject was originally placed in ASU on 1/19/05 at CAL-IV for Battery on Inmate W/Weapon. Subject received a 15 month Expected SHU Term with a MERD of 12/27/05, based on CDC 115 dated 1/19/05, Log # 01-05-A-043, for the specific act of Battery on Inmate W/Weapon. WG/PG D2-D effective 1/19/05 through MERD per PC 2933.6 is appropriate based on this disciplinary. CSR action of 7/12/05 endorsed Subject for CCI-SHU placement. Subject was received at CCI-IVB SHU on 7/20/05 from CAL-IV ASU. It is noted that Subject has received two CDC 115's (RVR). The first RVR is dated 8/12/05, Log #IVB-05-08-0491, for the specific act of Disobeying a Direct Order, which Subject was found Guilty of this Offense. The second is dated 10/3/05, Log #4BSH-05-10-0556, for the specific act of Disobeying a Direct Order-Refusing a Cellmate, which is still pending adjudication.


COMMITTEE DECISION: Based on a review of all Case Factors, UCC elects to assess 45 Days Forfeiture of Good Conduct Credits (FOC) for RVR dated 8/12/05, Log #IVB-05-08-0491, for the specific act of Disobeying a Direct Order with an adjusted MERD of 2/12/06. UCC also acts to retain Subject CCI-SHU pending completion of MERD. Exercise yard categories were discussed and explained with the Subject. Committee acts to reaffirm the Subject on the Individual Exercise Module (IEM) Exercise Yard based on Inmate's request and Committee review of the Central File. Committee reviewed Subject's Central File to determine housing assignment. Subject meets the criteria for Double Cell Status based on no in-cell misconduct or predatory behavior. UCC noted that SHU Offense occurred in Dayroom; however, Victim was Subject's Cellmate. Subject has been double celled successfully since this offense. CDC 1882 is in Central File and was reviewed this date by UCC. Subject is in agreement with both his yard and cell status. MAX Custody is appropriate. Subject actively participated in Committee discussion and decision stating that he agrees with committee's actions. Subject was advised of his appeal rights, as well as, behavioral expectations.

CASE FACTORS: Subject is a 34-year old, Black, New Commitment, 1st-Termer, received into CDC on 2/24/93 from Los Angeles County, for the Offense of Murder 1st & Attempted Murder 1st. **GPL:** GED. **Reading level:** GED. Subject was reviewed for DDP/DPP and does not meet the criteria. **Medical status:** Full Duty with Camp based on CDC 128C dated 3/2/93. **Psych** * **Concerns:** Clear-GP per CDC 128C dated 6/3/05. Subject was reviewed for MDO consideration and does not meet the criteria. **TB** code is: 32 per CDC 128C dated 2/10/05. **Escapes:** Clear. **Arson:** Clear. **Sex Related Offenses:** Clear. **HWDs:** Clear. **Past** substance use: Marijuana & Alcohol. CDC 812/812C notes enemies: yes. * **Gang Affiliation:** None. * **Moniker:** Unknown. * **Confidential information:** Clear. **Registration required:** None. **Notification required:** PC3058.6. **Restitution ordered:** None. **Noted. Past disciplinary history consists of notable CDC-115s for:** Conspiracy to Traffic Drugs-SHU (9/22/93), Refused to Submit Blood & Saliva Specimens (3/10/95 & 12/6/95), Refusing to Accept a Cellmate (8/21/99), Willfully Obstructing a Peace Officer (7/25/02), Battery on Inmate W/Weapon-SHU (1/19/05), & Disobeying a Direct Order (8/12/05). Subject is disqualified from Minimum Support Facility, Fire Camp, Community Correctional Facility, Substance Abuse Program, Restitution Center, or Community Correctional Re-entry Center Programs based on LIF/CLS/SU. Next anticipated review date is 2/8/06 for PRE MERD. Subject is a Level IV 180 design Inmate based on A-1 criteria.

COMMITTEE:

E. Devlin, CC-1


M. Bryant, FC (A)
CHAIRPERSON


K. Valencia, CC-II
RECORDER

Date: 11/30/05

ed

Classification: UCC / SHU PROGRAM REVIEW

Inst: CCI-IVB SHU

 Received
12/2/2005

EX. 4

INMATE/PAROLEE

APPEAL FORM

CDC 602 (12/87)

MAR 11 2005

Location: Institution/Parole Region

Log No.

05 0468

Category

#1

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

| NAME | NUMBER | ASSIGNMENT | UNIT/ROOM/NUMBER |
|---------|--------|------------|------------------|
| B. Hall | H6149 | Ad-599 | H6-6A-20 |

A. Describe Problem: On Feb. 16th, 2005 a LT. J. Timenez proceeded to hear a C.D.C. 115 without calling the witnesses as was requested by the Appellant in violation of C.C.R. Title 15, Subsec. 3315(e), (e)(1); the presence of the T.E. in violation of C.C.R. Title 15, Subsec. 3315(e)(4); deliberately "Failed" to "consider" mitigating

If you need more space, attach one additional sheet.

B. Action Requested: For this guilty finding to be reversed; all points that were add to the Appellants classification score in regards to 115 reduced; the time that was add

Inmate/Parolee Signature: B. Hall Date Submitted: 3/6/05

C. INFORMAL LEVEL (Date Received: _____)

Staff Response: _____

Staff Signature: _____

Date Returned to Inmate: _____

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification Chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: _____

Date Submitted: _____

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number: _____

05 0468

SCREEN OUT
MAR 18 2005

Returned on 3/21/05

☐ See Attached Letter

☐ Granted ☐ P. Granted ☐ Denied ☐ Other

For the Director's Review, submit all documents to: Director of Corrections
P.O. Box 942883

Signature:

Date Submitted:

H. If dissatisfied, add data or reasons for requesting a Director's Level Review, and submit by mail to the third level within 15 days of receipt of response.

Director/Superintendent Signature

Warden/Superintendent Signature:

Signature:

See Attached Letter

REVIEWER'S ACTION (Complete within 10 working days): Date assigned:

☐ Granted ☐ P. Granted ☒ Denied ☐ Other

Signature:

Date Submitted:

Signature: _____

F. If dissatisfied, explain reasons for requesting a Second-Level Review, and submit to Institution or Parole Region Appeals Coordinator within 15 days of receipt of response.

Signature:

Division Head Approved:

Staff Signature:

Title:

Date Completed:

Returned

Date to inmate:

Interviewed by:

E. REVIEWER'S ACTION (Complete within 15 working days): Date assigned:

First Level ☐ Granted ☐ P. Granted ☐ Denied ☐ Other

05 0468 -7-7A

REG'D CAL APPEALS

MAR 1 2000

concluding Section A:

Factors in regards to these findings in violation of c.c.r. title 15 Subsec. 3341.5; Subsec. 3315(f); exercised a predetermination of the Appellants Guilt by excepting the rule violation report and I.E.'s report as written in violation of c.c.r. title 15, Subsec. 3320(h); the Appellant was denied the right to present documentary evidence in violation of c.c.r. title 15, Subsec. 3320(i); Due Process and not limited to.

continuing Section B:

(360) days deducted; for the Appellant to be accorded all his rights; ~~and~~ or this guilty finding reduced and not limited to;

continuing Section H: in which D.W. Bell deliberately "Failed" to and blatantly "Refused" to "allow"

the Appellant to present a defense to these allegations (see Second Level Response, no remarks as illustrated to D.W. Bell by the Appellant noted) in violation of C.E.R. Title 15, Subsec. 3084.5 (e)(1), (f)(1), etc... in regards to the SHO's deliberate "Failure" to "call" C/O H. Gomez as a witness as was requested in violation of C.E.R. Title 15, Subsec. 3084.5 (h)(2)(D), 3315 (e), (e)(1) and or make C/O H. Gomez available by phone in violation of Subsec. 3315 (e)(6); the Appellants I.E. for a witness and in violation of these same Subsections; the SHO's blatant "Failure" to and deliberate "Refusal" to "consider" mitigating factors in the Appellants favor in violation of Subsec. 3084.5 (h)(2)(E), 3320 (L), 3341.5 (c)(10)(A); the fact that the Appellant was "Not" charged with committing an act of "Force or violence" in violation of Subsec. 3005 (c) but disobeying an order in violation of Sec. 3005 (b); the SHO's deliberate

continuing Section H: "Failure" to "Allow" the Appellant to Present documentary evidence (21m martin's medical report; Part H1, Pg. 1 of 11 - 3 of 11 of this crime (incident report) in violation of Subsec. 3084.5(h)(2)(E), 3320(L) in order ^{to see if} ~~that~~ a "Serious Injury" was noted as defined in Subsec. 3000; as to the Stho's exercise of a Predetermination ~~as to~~ the Appellants' guilt in violation of Subsec. 3320(h); as to the denial of the Appellants' Due Process rights and not limited to.

D.W. Bell cites at P. 4 of this Second Level Response that "I appeared before an experienced Stho J. Ries at which time you were found guilty of Battery on an inmate with a weapon" in which is "False" and "Fabricated" because a Stho J. Jimenez heard this US not J. Ries (see C.D.C. 115, 115A, 115C)

in which demonstrates that SMO J. Timenez was "Not" interviewed and or this investigated in violation of C.E.R. title 15 Subsec. 3084.5(e)(1), (f), and (c).

J. W. Bell call further states at pg. 4-5 "that the Appellant requested witnesses, this request was granted, that C/O H. Gomez was out on medical leave during this hearing, that the Appellant accepted these questions and answers, refused to sign the C.D.C. 115A acknowledging acceptance of these questions and answers, that a C/O Steele witnessed these events, and that the SMO elected to proceed with this 115 hearing" in which is "Fabricated" and "False" in violation of Section 3084.5(h)(1)(A) and not limited to.

If the 115c, p. 2 of 2, is examined, the reviewer will acknowledge that there is "No" Verbal "quotes"

continuing Section A: of this alleged acceptance of these questions and answers as to the I.E.'s report on c/o H. Gomez, no signature, etc... as a "quote" is "given" in the form of a statement by the appellant as illustrated on p. 1 of 2 of this use in which demonstrates that this alleged "acceptance" of this "I.E.'s Report" as to c/o H. Gomez and this alleged "waiver" to this "c/o" as a witness is "fabricated" and was "falsified" in violation of Section 3084.5(h)(1)(A), (h)(2)(D), and not limited to. as well as 3315(e).

Also, if these questions and answers were accepted, why wasn't c/o T. Rocha's 9 and 2 signed since he was questioned by phone? in which further demonstrates the appellants non-acceptance of these 9 and 2's and shows that their

"False" and were "Fabricated" in violation of C.E.R. Title 15, Section 3084.5 (W)(1)(A) and not limited to and that the Appellant was denied a witness.

If this Second Level Response is further examined, the reviewer will acknowledge that D.W. Bell ~~and~~ never "addresses" the Appellant "Allegations" of being denied the right to call this I.E. as a witness, the right to present documentary evidences (Fm Martin's medical report; this crime / incident report Part 1A PP. 1 of 11 through 3 of 11; and not limited to) that the SHO never considered the Appellants mitigating factors, exercised a pre-determination, of the Appellants ~~mitigating factors~~, exercised a ~~pre~~ ~~guilt~~ by excepting this RVR and I.E.'s report as written, was denied Due Process and not limited to.

D.W. Bell ~~and~~ further alleges at P. 5 of this Second Level Response

continuing Section II: that the Appellant did not "Provide new or compelling evidence to the RVR" in which is "Fabricated" and "False" because if this c.d.c. 115e, page 1 of 1 and 2 of 2 is examined, there's "No" mention by the SHO that he considered ~~F~~m Martin's medical report; this crime / incident report Part 1A, pp. 1 of 11 - 3 of 11 in order to "Assess" whether it a "Serious Injury" was noted or not and used this info. in order to sustain a finding of Guilt for the actual charge and or reduce it; considered mitigating factors as to the Appellants prior disciplinary history; if the Appellant feared for his safety; whether this incident was Planned or Situational and Spontaneous, etc...; whether the Appellant requested and or was given the chance to request this I.E. as a witness;

was denied this right and of request; Due Process; and not limited to.

Also, the Appellant requested that this I.E. investigate the reporting employee's, Cols T. Rocha's, and H. Gomez background for acts of prior falsified C.D.C. 115's, complaints that been filed against them by inmates, staff, and civilians in order to assess their credibility as witnesses, this I.E. deliberately "Failed" to and blatantly "Refused" to "Perform" such a task in violation of C.D.C.R. Title 15, Sections 3024.5(h)(2)(E), 3315(d)(1), 3450(2), and not limited to, the SMO "addresses" this "Issue" as to the reporting employee only and "Denied" the "Appellant" this right in violation of Sections 3024.5(h)(2)(E), 3320(1)(d), et. seq. (See p. 2 of 2 of this C.D.C. 115c) and D.W. Bell et al. Never "Addresses" this

continuing Section II: "Issue" not investigated it in which further shows that relief is warranted.

Therefore, in the interest of justice and based upon these factors this guilty finding must be reversed, this is re-issued and reheard, and or dismissed based upon the falsity of this RVR, the I.E.'s reports, this second level of Review Response, the denial of the right to a fair hearing and future fair hearing(s) per C.E.R. Title 15, sections 3084.5 (h) (1), (A), (B), (C), (h) (2), (D), (E), (F), 3315 (F) (1), and not limited to!

And what prevented the Appellant from submitting this appeal within fifteen days was the denial of access to the law library in order to mail this 602 and 115

attachments, the manila envelope
to do so, writing material and
not limited to. (See a.c.r. title 15,
Subsections 3084.2(c), 3084.3(c)(6), and 3084.5
(c).)

EX. 6

State of California
CDC FORM 695

Screening For:

CDC 602 Inmate/Parolee Appeals

CDC 1824 Reasonable Modification or Accommodation Request

RE: Screening at the SECOND Level

March 18, 2005 : received back on 3/21/05
unprocessed

HILL, H67149

FA0500000000132L

Log Number: CAL-A-

(Note: Log numbers are not assigned to screen out appeals, or informal level appeals)

The enclosed documents are being returned to you for the following reasons:

You disciplinary appeal is incomplete. You must attach legible copies of all documents you received during the disciplinary process. For example: the completed CDC 115, Rule Violation Report, the laboratory report, the Mental Health Assessment Form, the completed CDC 115-A, Serious Rule Violation Report, the CDC 115, Investigative Employee report, supplemental reports for the CDC 115, the CDC 7219, Report of Injury, the complete CDC 837, Incident Report, and the CDC 1030, Confidential Information Disclosure Form.

You need to attach a copy of your CDC 837 report, CDC 7219 reports , and all other reports relevant to your disciplinary hearing.

DeW Bell

Appeals Coordinator
CALIPATRIA STATE PRISON

NOTE: Failure to follow instruction(s) will be viewed as non-cooperation and your appeal will be automatically dismissed pursuant to CCR 3084.4(d). This screening decision may not be appealed. If you believe this screen out is in error, please return this form to the Appeals Coordinator with an explanation of why you believe it to be in error, and supporting documents. You have only 15 days to comply with the above directives.

PERMANENT APPEAL ATTACHMENT - DO NOT REMOVE

EX. 5

State of California

MAY 03 2005

Department of Corrections

Memorandum

Date: April 28, 2005

To: Hill, H-67149
Calipatria State Prison

Subject: SECOND LEVEL APPEAL RESPONSE
LOG NO.: CAL 05-00468

ISSUE:

The appellant is submitting this appeal relative to CDC Form 115, Rules Violation Report (RVR), Log #01-05-A-043, dated January 19, 2005, for Battery on an Inmate with a Weapon. It is the appellant's position that the Senior Hearing Officer (SHO), inappropriately found you guilty of the aforementioned RVR on Wednesday, February 16, 2005. You allege your due process rights were violated due to you were denied witnesses that you requested to be present at your disciplinary hearing. You allege this is a violation of California Code of Regulations (CCR), Title 15, Section 3315(e)(1). You further allege you were denied the right to present documentary evidence, which you allege is a violation of CCR, Title 15, Section 3320(1). You allege the SHO deliberately failed to consider mitigating factors in regards to the findings, in which you allege is a violation of CCR, Title 15, Section 3341.5.

The appellant requests on appeal that the disposition relative to the RVR is reversed, your Classification Score be adjusted accordingly, and the forfeiture of credit be voided.

INTERVIEWED BY: D.W. Bell, Correctional Counselor II, on April 26, 2005.

REGULATIONS: The rules governing this issue are:

CCR 3005. Conduct.

(a) Inmates and parolees shall obey all laws, regulations, and local procedures, and refrain from behavior which might lead to violence or disorder, or otherwise endangers facility, outside community or another person.

(b) Obeying Orders. Inmates and parolees must promptly and courteously obey written and verbal orders and instructions from department staff, and from employees of other agencies with authorized responsibility for the custody and supervision of inmates and parolees.

~~(c)~~ (c) Force or Violence. Inmates shall not willfully commit or assist another person in the commission of a violent injury to any person or persons, including self mutilation or attempted suicide, nor attempt or threaten the use of force or violence upon another person. Inmates shall not willfully attempt to incite others, either verbally or in writing, or by other deliberate action, to use force or violence upon another person.

HILL, H-67149
CAL-05-00468
PAGE 2

CCR 3312. Disciplinary Methods.

(a) Inmate misconduct shall be handled by:

(1) Verbal Counseling. Staff may respond to minor misconduct by verbal counseling. When verbal counseling achieves corrective action, a written report of the misconduct or counseling is unnecessary.

(2) Custodial Counseling Chrono. When similar minor misconduct recurs after verbal counseling or if documentation of minor misconduct is needed, a description of the misconduct and counseling provided shall be documented on a CDC Form 128-A, Custodial Counseling Chrono. A copy of the completed form shall be provided to the inmate and the original placed in the inmate's central file. Disposition of any contraband involved shall be documented in the CDC Form 128-A.

* (3) Rules Violation Report. When misconduct is believed to be a violation of law or is not minor in nature, it shall be reported on a CDC Form 115 (Rev. 7/88), Rules Violation Report.

(A) Unless an inmate charged with serious misconduct requires temporary administrative segregation pursuant to section 3335(b) pending adjudication of the disciplinary charges, the inmate may be retained in regularly assigned housing, work, and program assignments.

(B) If the inmate is placed in segregated housing pending the disciplinary proceedings, the official making the housing decision shall ensure compliance with the provisions of article 7 of this subchapter.

(b) Chief Disciplinary Officer Review of Disciplinary Actions. All disciplinary methods and actions shall be reviewed by the chief disciplinary officer, who shall be the institution head or a designee not below the level of correctional administrator or parole administrator I.

(1) The chief disciplinary officer shall affirm, reverse or modify the disciplinary action and/or credit forfeiture. The chief disciplinary officer may order a different action, order a different method of discipline, dismiss a charge, order a rehearing of the charge, or combine any of these actions.

(2) Except upon discovery of information or evidence not available or reasonably discoverable at the time of a disciplinary action, an order for a different method of discipline or for rehearing of the charges shall not result in a greater penalty or more severe action than that originally taken.

CCR 3320. Hearing Procedures and Time Limitations.

* (a) A copy of the CDC Form 115 and all nonconfidential reports to be relied upon in a disciplinary hearing shall normally be provided to the inmate within 24 hours after the CDC Form 115 has been classified serious or administrative and within 30 days of the misconduct, but not later than 15 days from the date the information leading to the charges is discovered by staff or, in the case of an escapee, 15 days after the escapee's return to the department's custody.

(1) Providing the inmate with a copy of the CDC Form 115 may be delayed beyond 15 days, but no more than 30 days, and shall not prohibit forfeiture of credits as a penalty for the misconduct when all of the following criteria are met:

(A) The misconduct could be prosecuted as murder, attempted murder, or battery on staff.

(B) An investigation is continuing to identify others involved in the misconduct.

(C) Within 15 days of discovering the misconduct, a written request to delay the inmate's notification, including the reasons for the delay, is approved by the chief disciplinary officer.

HILL, H-67149
 CAL-05-00468
 PAGE 3

(b) The charges shall be heard within 30 days from the date the inmate is provided a copy of the CDC Form 115 unless the charges were referred for possible prosecution and the inmate has been granted a request for postponement of the disciplinary proceedings pending the outcome of the referral, or if the inmate is transferred out of the custody of the department.

* (c) A disciplinary hearing shall not be held until the inmate has been provided:

✓ (1) A copy of the CDC Form 115 and all nonconfidential reports to be relied upon in the hearing, including the investigative employee's report.

• (2) At least 24 hours to review the material and prepare for the hearing. The hearing may be held earlier if the inmate waives the 24-hour period.

(d) A hearing may be postponed up to 30 days upon the inmate's written request showing a reasonable need for postponement. Postponement shall not bar any credit forfeiture.

(e) If a hearing is postponed for any reason, such reason shall be documented in the findings section of the CDC Form 115.

(f) The following events shall preclude denial or forfeiture of credits:

(1) The inmate was not provided a copy of the CDC Form 115 within 15 days after the discovery of information leading to the charges except as otherwise provided in (a).

(2) The official conducting the hearing did not establish that the information or evidence was not reasonably discoverable within 30 days or sooner or when the inmate is not provided a copy of the CDC Form 115 within 15 days of the misconduct, unless (a) is applicable.

(3) The disciplinary hearing was not held within 30 days of the date the inmate was provided a copy of the CDC Form 115, unless the inmate requested and was granted a postponement of the hearing pending outcome of the referral pursuant to section 3316, or if the inmate is transferred out of the custody of the department.

(4) A disciplinary hearing was not held within 30 days after the chief disciplinary officer was notified of the outcome of a prosecution referral or within 30 days of the inmate's revoked request for postponement of the hearing, if an accusatory pleading was not filed against the inmate.

(5) The inmate was not provided a written explanation of the extraordinary circumstances preventing a hearing within 30 days after the inmate was provided a copy of the CDC Form 115 and the official conducting the hearing did not establish in the findings of the hearing that the delay did not prejudice the inmate.

(g) The inmate shall normally be present at a disciplinary hearing. When a disciplinary hearing is held without the inmate present, the reason for the absence shall be documented during the hearing on the CDC Form 115. The inmate shall be present at a disciplinary hearing unless:

(1) A psychiatrist has determined that the inmate suffers from a serious mental disorder preventing the inmate's understanding of or participation in the hearing, and there is a compelling reason or need to proceed with the hearing.

(2) The inmate was convicted of escape in court and has not been returned to the facility or jurisdiction from which the escape occurred.

(3) The inmate has waived the right to be present in writing.

* (h) Staff who observed, reported, classified, supplied supplemental reports to, or investigated the alleged rule violation; who assisted the inmate in preparing for the hearing; or for any other reason have a predetermined belief of the inmate's guilt or innocence shall not hear the charges or be present during deliberations to determine guilt or innocence and disposition of the charges.

* (i) An inmate witness shall not be transferred between facilities to testify at a hearing unless the chief disciplinary officer of the facility hearing the charges

HILL, H-67149
 CAL-05-00468
 PAGE 4

determines a fair and impartial hearing cannot be conducted unless the witness is present. When a witness is not available, the chief disciplinary officer of the facility where the witness is located shall be notified of the need to appoint an investigative employee to discuss the case with the investigative employee of the facility conducting the disciplinary hearing; to interview the witness, prepare a written investigative report, and forward the report to the facility where the hearing will be conducted.

(j) When an inmate whose rule violation charges are being adjudicated is ordered to leave the hearing room, all witnesses, including staff witnesses, shall also leave the room. The inmate has a right to be present when any witness is present at the hearing.

(k) When a serious rule violation occurs during transportation of an inmate, transporting staff witnesses shall be present at the hearing if requested or shall be available for questioning by telephone during the disciplinary hearing.

(l) The inmate may present documentary evidence in defense or mitigation of the charges. Any finding of guilt shall be based upon determination by the official(s) conducting the disciplinary hearing that a preponderance of evidence submitted at the hearing substantiates the charge. At the conclusion of the disciplinary hearing, the inmate shall be informed of the findings and disposition of the charge and of the right to and procedure for appeal of the action. Within five working days following review of the CDC Form 115 and CDC Form 115-A by the chief disciplinary officer, the inmate shall be provided a copy of the completed CDC Form 115 containing the findings, disposition, and evidence relied upon in reaching the conclusions.

(m) When an inmate is charged with possession of unauthorized or dangerous items or substances, or when unauthorized or dangerous items or substances are associated with commission of the charged rule violation, the hearing official shall record the disposition of the item or substance in the disposition section of the CDC Form 115.

On February 01, 2005, you were served a pre-hearing copy of RVR, Log #01-05-A-043, dated January 19, 2005, for the specific act of Battery on an Inmate with a Weapon. On February 08, 2005, you were served a copy of Incident Report #CAL-FA3-05-01-0037, and a copy of your CDC 7219 Medical of Injury or Unusual Occurrence Report.

On February 16, 2005, at approximately 2000 hours, you appeared before an experienced SHO, J. Ries, at which time you were found guilty of Battery on an Inmate with a Weapon, and assessed 360 days forfeiture of credit consistent with a Division A-1 offense.

On February 28, 2005, the SHO's finding and disposition were reviewed and affirmed by a Chief Disciplinary Officer. On March 03, 2005, you were issued the final copy of the adjudicated RVR.

You plead not guilty at your hearing and elected to make the following statement: "I told the officers that we had problems, and were not getting along."

The SHO considered the statement at the time of the hearing regarding your not guilty plea.

At the time of the hearing you requested witnesses and they were granted. It is noted you requested Correctional Officer (CO) Gomez as a witness. The SHO informed you that CO Gomez was out on medical leave at the time your hearing was being conducted. The Second Level of Review notes the SHO documented

HILL, H-67149
CAL-05-00468
PAGE 5

at the time of the hearing, you stated you accepted the questions and answers from CO Gomez, which is documented in the Investigative Employee (IE) report. The SHO noted your verbal acceptance of the questions and answers provided by CO Gomez in the IE report. The SHO also noted you stated that you were not going to sign the CDC 115-A, acknowledging your verbal acceptance. CO Steele was present at your disciplinary hearing and witnessed your verbal acceptance, and your refusal to sign the CDC 115-A. It is noted the SHO then elected to proceed with the hearing. The SHO was able to review CO Gomez's answers to your questions via the I.E. report.

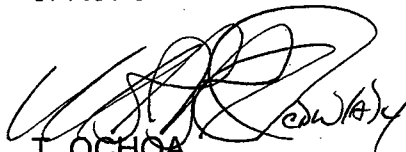
You were assigned an I.E. on February 01, 2005. You were not assigned a Staff Assistant in accordance with CCR, Title 15, Section 3315 (d)(2).

You were found guilty. This finding was based upon the preponderance of evidence submitted at the hearing, which is considered valid and substantiates the charge. This evidence included: 1. The Reporting Employee's written report which states in part; "I observed Inmate Hill, H-67149 pick up a broom from the lower tier and go upstairs. Inmate Hill started striking Inmate Martin, K-65209 with the broom handle and striking him in the upper torso and head in front of cell 212." 2. The SHO reviewed all reports relevant to the CDC 115 hearing. The SHO was convinced that Inmate Hill willfully battered Inmate Martin with the broom handle.

After reviewing the processing of your RVR, it was determined all time constraints were met, procedures were followed, and due process was afforded to you. You provided no new or compelling evidence to the RVR. Therefore, I find no reason to alter the original decision.

DECISION: The appeal is denied.

The appellant is advised that this issue may be submitted for a Director's Level of Review if desired.


T. OCHOA
Chief Deputy Warden (A)
Calipatria State Prison

STATE OF CALIFORNIA - DEPARTMENT OF CORRECTIONS AND REHABILITATION

**INMATE APPEALS BRANCH**

1515 S Street, Sacramento, CA 95814
P.O. Box 942883
Sacramento, CA 94283-0001

August 2, 2005

*received on 8/16/2005
unprocessed after 60+ days*

Hill, CDC #H-67149
California Correctional Institution
P.O. Box 1031
Tehachapi, CA 93581

Re: Institution Appeal Log #CAL-A-05-0468 Disciplinary

Dear Mr. Hill:

The enclosed documents are being returned to you for the following reasons:

An appellant must submit the appeal within 15 working days of the event or decision being appealed, or of receiving a lower level decision in accordance with CCR 3084.6(c).

Your assigned counselor, the Appeals Coordinator, or your Parole Agent can answer any questions you may have regarding the appeals process. Library staff can help you obtain any addresses you need.

[Signature]
M. GRANNIS, Chief
Inmate Appeals Branch

EX-7

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

**INMATE/PAROLEE
APPEAL FORM**

CDC 602 (12/87)

Location: Institution/Parole Region

Log No.

Category

1. _____

1. _____

2. _____

2. _____

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

| NAME | NUMBER | ASSIGNMENT | UNIT/ROOM NUMBER |
|-------------|--------|------------|------------------|
| Mr. B. Hill | H67149 | | 4B-6A-509L |

A. Describe Problem: on 8/11/05 I received box log # CAL-A-05-0468 back from the chief, Inmate Appeals N. Grannis in which this state personnel, Joanne Woodford, Director of C.I.D., and others has deliberately "Failed" to "Process" this appeal after retaining it for 60+ days citing that the appellant has failed to submit this appeal for third level review within

If you need more space, attach one additional sheet.

B. Action Requested: For the attached box log # CAL-A-05-0468 to be processed and answered within 60 days per C.C.R. Title 15 SubSection 3084.6(b)(4); for this appeal to be pro-

Inmate/Parolee Signature: B. Hill

Date Submitted: 8/14/05

C. INFORMAL LEVEL (Date Received: _____)

received 8/25/05
unanswered

Staff Response: _____

Staff Signature: _____

Date Returned to Inmate: _____

D. FORMAL LEVEL

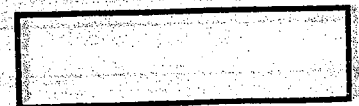
If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification Chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: _____

Date Submitted: _____

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number: _____



continuing Section. A: 15 days
 of its receipt even though the
 Appellant explained the reasons for
 not doing ^{so} in the body of this
 grievance per c.r.b. title 15, Sub-
 Sections 3084.2(c), 3084.3(c), and 3084.5
 (c) excusing this delay in an
 attempt to circumvent the Appellants
 court access in violation of
 Davis vs. Milwaukee County 225
 F.2d 967 (E.D. Wis. 2002); Bradley
 vs. Hale, 64 F.3d 1276 (9th Cir. 1995)
 and not limited to.

continuing Section. B: Cessed
 as a citizens complaint per California
 Penal Code Section 832.5 et. Seq.
 against all involved parties for not
 filing and answering box log #
 CML-A-05-0468; counseling, admonish-
 ing to adhere, cease, and desist
 from performing such "In-House"
 policy(s), practices, and procedures;

Incl not limited to.

EX. 8

INMATE APPEALS BRANCH

1515 S Street, Sacramento, CA 95814
P.O. Box 942883
Sacramento, CA 94283-0001



October 15, 2005 ; *I received on 10/25/05 unanswered*

Hill, CDC #H-67149
California Correctional Institution
P.O. Box 1031
Tehachapi, CA 93581

Re: Institution Appeal Log #CAL-A-05-0468 Disciplinary

Dear Mr. Hill:

The enclosed documents are being returned to you for the following reasons:

An appellant must submit the appeal within 15 working days of the event or decision being appealed, or of receiving a lower level decision in accordance with CCR 3084.6(c).

Your assigned counselor, the Appeals Coordinator, or your Parole Agent can answer any questions you may have regarding the appeals process. Library staff can help you obtain any addresses you need.

NG
N. GRANNIS, Chief
Inmate Appeals Branch

PROOF OF SERVICE

I, Brian T. Hill, CERTIFY AND DECLARE THAT I AM OVER THE AGE OF (18) YEARS, A PARTY TO THE WITHIN ACTION AND A CITIZEN AND OR RESIDENT OF THE UNITED STATES.

I SERVED THE FOLLOWING DOCUMENT(S), First Amended Complaint UPON THE PARTIES LISTED BELOW BY PLACING SEALED ENVELOPES IN THE UNITED STATES MAIL HERE AT SARASOTA, CALIFORNIA AS FOLLOWS:

GREGORY A. OTT
Attorney General
455 Golden Gate Ave.
Suite 11000
San Francisco, CA. 94102

clerks office
U.S. Dist. Court
Sb. Dist. of Calif.
880 Front St.
Suite 4290
San Diego, CA. 92101-8900

I, Brian T. Hill, SWEAR UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED AND DATED THIS 26th DAY OF August, 20 08

B. Hill
DECLARANT